

# **PERENNIAL PANIC**

## **Why Child Welfare in Arizona Never Gets Better**

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August 20, 2007

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#### ABOUT NCCPR

The National Coalition for Child Protection Reform is a non-profit organization whose members have encountered the child protection system in their professional capacities and work to make it better serve America's most vulnerable children. **Board of Directors: President:** *Martin Guggenheim*, former Director of Clinical and Advocacy Programs, New York University Law School, author, *What's Wrong with Children's Rights* (Harvard University Press: 2005). **Vice President:** *Carolyn Kubitschek*, attorney specializing in child welfare law, former Coordinator of Family Law, Legal Services for New York City. **Treasurer:** *Joanne C. Fray*, attorney with extensive experience with litigation involving the care and protection of children and termination of parental rights, Lexington, Mass. **Directors:** *Elizabeth Vorenberg*, (Founding President) former Assistant Commissioner of Public Welfare, State of Massachusetts; former Deputy Director, Massachusetts Advocacy Center; former member, National Board of Directors, American Civil Liberties Union; *Annette Ruth Appell*, Associate Dean, William S. Boyd School of Law, University of Nevada, Las Vegas; former member of the Clinical Faculty, Children and Family Justice Center, Northwestern University Law School Legal Clinic, former Attorney and Guardian ad Litem, office of the Cook County, Ill. Public Guardian; *Marty Beyer, Ph.D.*, clinical psychologist and consultant to numerous child welfare reform efforts; *Ira Burnim*, Legal Director, Judge Bazelon Center for Mental Health Law, Washington, DC; former Legal Director, Children's Defense Fund; former Staff Attorney, Southern Poverty Law Center; Prof. Paul Chill, Associate Dean, University of Connecticut School of Law; Prof. Prof. Dorothy Roberts, Northwestern University School of Law, author *Shattered Bonds: The Color of Child Welfare* (Basic Civitas Books: 2002); Witold "Vic" Walczak, Legal Director, Greater Pittsburgh Chapter, American Civil Liberties Union Foundation of Pennsylvania; Ruth White, former Director of Housing and Homelessness, Child Welfare League of America. **Staff:** *Richard Wexler*, Executive Director. Author, *Wounded Innocents: The Real Victims of the War Against Child Abuse*. (Prometheus Books: 1990, 1995).

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#### Overview

A child dies a horrible death, even though the child and the family were well known to the state child protective services agency. For weeks the story is on the front page of the state's largest newspaper. The newspaper, politicians and the state's leading "child advocate" all are sure they know the problem.

They say it happened because state law is unclear. They claim the law doesn't establish that CPS is supposed to put child safety ahead of family preservation. Get rid of those mixed messages, they say, and there will be no more such tragedies.

No, this is not the story of Arizona in 2003; it's the story of Illinois, a decade earlier. The child whose death sparked the frenzy was not Anndreah Robertson, it was Joseph Wallace.

Illinois lawmakers were not content with making just one change in the law about the "mission" of the child welfare agency. They added the phrase "best interests of the child" to the law in 30 different places.

Caseworkers got the message all right. The number of children in foster care soared from 33,000 in 1993 to more than 50,000 in 1997.<sup>1</sup> By that year, a child was more likely to be in foster care in Illinois than in any other state. And it was all a disaster for children.

- Having supposedly "put children first," Illinois officials soon found they had no place to put children at all. So they were jammed into a hideous shelter, then overflowed into offices.<sup>2</sup>

- Children were thrown into any foster home with a bed, with little screening of foster parents or foster children. As a result, according to Benjamin Wolf of the American Civil Liberties Union of Illinois,

that system became "like a laboratory experiment to *produce* the sexual abuse of children."<sup>3</sup>

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In metropolitan Chicago, children are taken at about one-quarter the rate of metropolitan Phoenix.

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- But even that wasn't the worst of it. Though all the changes were made in the name of saving children's lives, child abuse fatalities increased. Such deaths soared from 78 before efforts to keep families together were abandoned to 82 the first year after, to 91 in fiscal 1997.<sup>4</sup>

Abandoning family preservation took a bad system and made it, in Wolf's words, "unquestionably worse."<sup>5</sup>

But Illinois faced up to its failure. After hitting bottom in 1997, the state reversed course and embraced safe, proven approaches to keeping families together.

Today, there are fewer than 17,000 children in foster care in Illinois. The state takes children at one of the lowest rates in the country, a rate half the rate in Arizona.<sup>6</sup> In metropolitan Chicago, children are taken at about *one-quarter* the rate of metropolitan Phoenix.<sup>7</sup>

Because Illinois is operating under a consent decree resulting from a lawsuit brought by the state ACLU, independent, court-appointed monitors look over everyone's shoulders. Those monitors have found that, as the use of foster care has plummeted, child safety has improved.<sup>8</sup>

That is the big difference between Illinois and Arizona. Illinois learned from

its mistakes. And Illinois learned from other states.

"A lot of the ideas we used came from the Alabama example," Wolf told *The New York Times*.<sup>9</sup>

Yes, he did say Alabama.

Thanks to a lawsuit that led to a landmark consent decree, Alabama is rebuilding its entire child welfare system to emphasize keeping families together. (One of the lawyers who brought the suit, on behalf of the Bazelon Center for Mental Health Law, is a member of NCCPR's Board of Directors.)

Alabama takes away children at one of the lowest rates in the nation.<sup>10</sup> The rate of removal in Arizona is 50 percent higher. But Alabama has cut the rate of reabuse of children left in their own homes in half, and, as in Illinois, an independent, court-appointed monitor has found that children are *safer* now than they were before the changes.<sup>11</sup>

The big northern state with America's second largest city found it had no problem using ideas from a small, southern state where no city has a population larger than 250,000.

### Lessons for Arizona

The kind of panic seen in Illinois in 1993, and the dreadful results, are not unusual. Similar panics have swept through New Jersey, Florida, Connecticut (twice) New York City (twice) and Texas (twice). But in almost every case, there would be one more element to the pattern: After a couple of years of panic, the people in charge of child welfare did what people usually do after they panic; they calmed down, looked around and said, in effect, "Oh my God, what have we done?"

Sometimes, they simply reverted to the way things were before the panic. That's one reason why, when another case grabbed public attention, there would be another panic. But in other cases, they actually

reversed course and worked to keep families together, the way Illinois did.

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But we know of two places where, somehow, a state got stuck in panic mode. Every opportunity to calm down and rethink has been squandered. One is Florida, though even there, as the system decentralizes, some regions have learned from past mistakes.<sup>12</sup>

The other state is Arizona, the state of perennial panic. The state's children are suffering enormously for it.

At the start it was just like Illinois. It began with enormous media attention to the death of a child "known to the system."

Then the politicians started piling on. In Illinois that was led by the man who held the job of "Public Guardian," a flamboyant, media-savvy figure who represented children in child maltreatment cases. In Arizona, the pressure came from higher up, a new governor who stormed into office and promptly ordered child protective services workers to, in effect, take-the-child-and-run.

Between October 2002 and October 2004, the number of children torn from their parents over the course of a year soared by 40 percent, the largest two-year increase in any state during those years.<sup>13</sup>

Just as in Illinois, it was all done in the name of stopping deaths of children known to the child welfare agency. In 2005, the cheerleader-in-chief for the take-the-child-and-run approach, Carol Kamin, former president of the Children's Action Alliance wrote:

*"Our state has documented too many stories of children killed — or nearly killed — by abuse after CPS has left the children at home. In 2003, a strong consensus of Arizona lawmakers from both political parties proudly reformed state policies and funding to prevent such tragedies from happening again."*<sup>14</sup>

But even as Kamin was writing those words, the death toll from those very policies was mounting. Just as in Illinois, the take-the-child-and-run approach backfired.

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**The Arizona child welfare system is a wonderful deal for everybody - except the children. It is a system fueled by self-indulgence and self-delusion.**

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Child abuse fatalities went from 36 in 2002 to 41 in 2004. Not so bad, defenders of the panic said; after all the state's total population is rising fast as well. But then, in 2005, both total child abuse fatalities and deaths of children "known to the system" soared again, even faster. Child abuse fatalities totaled 50, outpacing population growth. Of those 50 children 23 were previously known to CPS,<sup>15</sup> up from 18 in 2004.<sup>16</sup>

Furthermore, some parts of the state are panicking more than others. Maricopa County takes children at about the same rate as the state average, a rate far higher than systems that are, *relatively speaking*, models. (All child welfare systems have serious problems and all have high-profile tragedies — a system is a model if it does better than most, even if it still has along way to go.)

But Pima County takes children at a rate 50 percent higher than Maricopa, even when the child poverty rates of the two

counties are factored in.<sup>17</sup> Yet that even greater tendency to "take the child and run" in Pima County did not prevent the deaths of Brandon Williams and of Tyler and Ariana Payne. Indeed, that mentality may have contributed to the deaths of the Payne children. (See *Paying the ultimate price of panic*, page 8).

But Arizona child welfare policy has little to do with what's best for children and everything to do with what gratifies adults. Want to score points as a politician without doing anything unpopular like, say, raising taxes? Promise to "crack down on child abuse" and rake the agency over the coals for not taking away enough kids. Want to convince yourself you're helping children when you're really just using them as human teddy bears? Volunteer at the local parking place shelter.

The Arizona child welfare system is a wonderful deal for everybody - except the children. It is a system fueled by self-indulgence and self-delusion.

And a lot of that is understandable.

### **The most dangerous phrase in the child welfare lexicon**

When a child dies and it turns out the case file has more "red flags" than a Soviet May Day parade, it's only natural to assume that the child was left in danger because workers are putting family preservation ahead of child safety, and don't understand their proper mission. So why not just do what Governor Janet Napolitano did, four days after taking office, and tell them to "Err on the side of protecting the child, and we'll sort it out later."<sup>18</sup>

In fact, there probably is no phrase in the child welfare lexicon that has done more harm to children than "err on the side of the child."

- When a child is needlessly thrown into foster care, he loses not only mom and dad but often brothers, sisters, aunts, uncles, grandparents, teachers, friends and classmates. He is cut loose from everyone loving

and familiar. For a young enough child it's an experience akin to a kidnapping. Other children feel they must have done something terribly wrong and now they are being punished. The emotional trauma can last a lifetime.

Unfortunately, even when we understand intellectually how harmful this trauma is, there is a tendency to dismiss it. "It's just emotional abuse," we think. "At least they're physically safe."

In fact, as is discussed below, often children are not physically safe in foster care either. But it's also crucial to understand the severity of the blows foster care can inflict to the psyche. It's the emotional harm that leaves many former foster children unable to hold a job. It's the emotional harm that leaves some unable to love or trust anyone. It's the emotional harm that can lead them into an adult life filled with jails and psychiatric centers.

That was proven by a new study of 15,000 children who had been through the child welfare system over 12 years. Children placed in foster care were compared to similarly-maltreated children left in their own homes. The most egregious cases, the very few in which any worker *with enough time to investigate* would agree the child should be removed, were eliminated. The study focused on the overwhelming majority of cases, where families have real problems, but also a real love for their children.

The result: As they grew up, the children left in their own homes were far less likely to become pregnant, far less likely to be arrested and far less likely to be unemployed than comparably-maltreated children placed in foster care.<sup>19</sup>

A second study, by University of Minnesota researchers, focused on children's mental health. Again they compared foster children to comparably maltreated children left in their own homes. Again, the foster children fared worse.<sup>20</sup>

In both these studies the foster children fared worse even though the birth fami-

lies received no special help, only the typical help birth families generally get from child welfare agencies, which often means little help, no help or the wrong help. In the case of the Minnesota study, some of the children left in their own homes were not even known to child protective services, so they could not have been "helped" by child protective services.

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### For some children, "err on the side of the child" became their epitaph.

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Another recent study, this one of foster care "alumni," found they had twice the rate of post-traumatic stress disorder of Gulf War veterans and only 20 percent could be said to be "doing well."<sup>21</sup>

How can throwing children into a system which churns out walking wounded four times out of five be "erring on the side of the child?"

- All that harm can occur even when the foster home is a good one. The majority are. But no one should forget children like Patrick Trauffer, Emily Mays and Dwight Hill, all of whom died *after* the State of Arizona decided to "err on the side of the child" and throw them into foster care. For these children, "err on the side of the child" became their epitaph.

Of course most foster parents don't kill foster children, or harm them in any way. Many are true heroes. But the rate of abuse in foster care is far higher than generally realized, far higher than in the general population, and far higher than official figures indicate, since those figures are based on agencies investigating themselves.

That same alumni study found that one-third of foster children said they'd been abused by a foster parent or another adult in a foster home. (The study didn't even ask

about one of the most common forms of abuse in foster care, foster children abusing each other.) Switching to orphanages won't help -- the record of institutions is even worse.<sup>22</sup> Furthermore, the more a foster care system is overwhelmed with children who don't need to be there, the less safe it becomes, as agencies are tempted to overcrowd foster homes and lower standards for foster parents.

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**CPS was so terrified of winding up on the front page for returning children to a mother once charged with neglect, that they left them in the hands of their alleged killer. ... Tyler and Ariana Payne paid the ultimate price of panic.**

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And, indeed, one of the first consequences of the Arizona foster-care panic was deliberate overcrowding of foster homes, with caseworkers skirting licensing rules and making "backdoor placements."<sup>23</sup>

If a child is taken from a perfectly safe home only to be beaten, raped or, like Patrick, Dwight, and Emily, killed in foster care, how is that "erring on the side of the child"?

- But even that isn't the worst of it. Everyone knows how badly caseworkers are overwhelmed. They often make bad decisions in both directions -- leaving some children in dangerous homes, even as more children are taken from homes that are safe or could be made safe with the right kinds of help. The two problems are directly related. The more workers are overwhelmed with children who don't need to be in foster care, the less time they have to find children in

real danger. So they make even more mistakes in both directions.

And that explains why, as more and more children have been taken from their homes in Arizona, child abuse fatalities have soared. Caseworkers already underprepared and so undertrained that the Arizona Department of Economic Security itself admits they are not up to the job<sup>24</sup> are inundated with false allegations and cases where children never needed to be placed in foster care.

Fully 40 percent of cases investigated in Arizona are classified as low risk.<sup>25</sup> (For a discussion of how reform will help in cases where that classification is wrong, see page 20.) Workers have less time to investigate each case. Warning signs are overlooked. More children die.

Most of the time the connection is indirect; time wasted taking large numbers of children needlessly is, in effect, stolen from other children in real danger.

But in one notorious Arizona case there may be a more direct connection. As is detailed on page 8, it's the case of Tyler and Ariana Payne. In that case, CPS was so terrified of winding up on the front page for returning children to a mother once charged with neglect, that they left them in the hands of their alleged killer.

And CPS sometimes says the problems were compounded by a shortage of staff and sometimes denies this. In fact, an overwhelming caseload probably did play a role. But the problem wasn't really too few staff, it was too many cases. Tyler and Ariana Payne paid the ultimate price of panic.

### **Who is in the system?**

But what explains the fact that even when families get little help, children left with birth parents tend to do better than comparably maltreated children placed in foster care?

# Tyler and Ariana Payne: Paying the ultimate price of panic

Often the connection between a foster-care panic and an increase in child abuse fatalities is indirect. The needless removal of some children from some homes causes caseworkers to become so busy that they overlook warning signs in completely different homes.

But sometimes the connection is much closer.

Last year, Jamie Hallam had a court order to get her children back from their father. But the Child Protective Services division of the Department of Economic Security refused to enforce the order. Why? They were investigating Hallam on a neglect charge.

Even after the allegation was ruled unsubstantiated, CPS refused to enforce the order and give Hallam her children back.

Once public pressure and a lawsuit forced DES to release documents in the case, it became clear that CPS was certain Hallam was using methamphetamine. The case records include some graphic allegations. But labeling a case “substantiated” requires little more than a caseworker making a guess and checking a box on a form. Even if a caseworker had no more than a “gut feeling” that the allegations were true, it would have been enough to check the “substantiated” box. To simply slap the label “substantiated” on a case, CPS doesn’t have to prove the allegation in court, or even go to court at all. Indeed, later, apparently based on a similar suspicion, CPS would remove another child from Hallam.

But back in March, 2006, Hallam received a letter stating that the case against her was closed. She called CPS seeking help to get her children back. CPS told her that, the letter notwithstanding, the case still was open. Then, a month later, CPS decided the case was closed again but never told Hallam. Then in October, when Hallam had another child, and that child tested positive for methamphetamine, CPS opened another case, and the infant was confiscated almost at birth. When Hallam passed a drug test, the infant was returned. CPS then failed to follow its own policies calling for face-to-face visits to see if the infant was safe.

But by that time, the older children CPS would not help Hallam get back from their father were dead.

Readers may not recognize the name Jamie Hallam, but they are likely to recognize the names of her children: Tyler and Ariana Payne. And they’ll recognize the name of the father: Christopher Matthew Payne, the man charged with murdering them, while their mother was fighting for custody.

CPS was so terrified of winding up on the front page for returning the children to a mother once charged with neglect, that they left them in the hands of their alleged killer. And then, when CPS wound up on the front page anyway, CPS promptly removed the surviving child, not from the father, but from the mother – even though at no time, through any of this, was Jamie Hallam ever accused of actually abusing any of her children. Now the youngest child must suffer arbitrary removal to foster care, so that CPS doesn’t look even worse in news accounts.

And why is it harmful to take an infant who may have been born with drugs in his system away from his mother? That is a lesson we should have learned from the last “drug plague”:

University of Florida Medical Center researchers studied two groups of infants born with cocaine in their systems. One group was placed in foster care, the other with birth mothers able to care for them. After six months, the babies were tested using all the usual measures of infant development: rolling over, sitting up, reaching out. Consistently, the children placed with their birth mothers did better. For the foster children, being taken from their mothers was more toxic than the cocaine.<sup>26</sup>

In examining the lack of checks on either parent, Rep. Jonathan Paton says “you can only come to the conclusion that they didn’t want to put time in to investigate.” Perhaps. More likely, however, they didn’t *have* time to investigate.

CPS has gone back and forth on whether part of the problem in this case was an acute staff shortage in Pima County. In fact, the problem was less a shortage of staff than a surfeit of cases. There was the foster-care panic that began in 2003. There was the mandate to “investigate every case” which suddenly added 5,000 new cases per year in 2004. And there was the fact that Pima County tears apart families at a rate 50 percent above the state average.

So the so-called “shortage” was a result of the fact that workers are drowning in false allegations and trivial cases, taking workers’ time away from investigating any case thoroughly enough.

But what if the allegations against Jamie Hallam were true? In a well-functioning system, she and her children would be alive and well; living, if necessary, in a residential drug treatment program where parents can stay with their children. But there are very few such programs in Arizona, partly because the state has been throwing away money that could fund them on institutionalizing children.

CPS claims that Hallam was offered services and refused. But the services appear to be no more than the cookie-cutter “counseling” and “parent education” that offer no resemblance to real help. CPS also claims there was no way to compel Hallam to accept help. In fact, “do it or we’ll take away your child” tends to be quite effective.

So Tyler and Ariana Payne paid the ultimate price of panic.

Yet this case has been used to argue that CPS is not aggressive enough about removing children from their homes.

Indeed, the publicity surrounding the Payne case probably already has started another panic. Even more families probably are being needlessly torn apart - especially in Pima County - the system probably is becoming even more overwhelmed - and still another tragedy now is even more likely.<sup>27</sup>

It’s explained by the fact that, contrary to the common stereotype, most parents who lose their children to foster care are neither brutally abusive nor hopelessly addicted. Far more common are cases in which a family’s poverty is confused with child “neglect.”

Several studies have found that 30 percent of America’s foster children could be home right now if their parents just had decent housing.<sup>28</sup> And single parents, desperate to keep their low-wage jobs when the sitter doesn’t show may have to choose between staying home and getting fired, or going to work and having their children taken on “lack of supervision” charges.<sup>29</sup>

Other cases fall on a broad continuum between the extremes, the parents neither all victim nor all villain. What these cases have in common is the fact that there are a wide variety of proven programs that can keep these children in their own homes, and do it with a far better track record for safety than foster care.

Case in point: Robin Scoins, whose story was told by *Phoenix New Times*. Scoins took antidepressants and cold medication. That caused a false positive on a drug test. So her infant son was confiscated at birth. As *New Times* notes:

*Not only did the baby test negative for everything, but Scoins subsequently passed two more drug tests.*

*No matter. When Scoins’ boy (called C.Q. in court papers to protect his privacy) was big enough to leave the hospital in November, Scoins didn’t get a call to pick him up. Instead, a CPS worker left her a note.*

*CPS had taken the baby.*

*The reason: According to the caseworker, Scoins had “tested positive for methamphetamines.”*

*Amphetamines are present in any number of drugs, not just crystal meth. But while CPS caseworkers deal with thousands of meth-related cases in the course of a year, the staffer on Scoins’ case didn’t seem to realize that. Nor did she acknowledge that Scoins’ amphetamine “positive” was in dispute.*

*Instead, CPS’s report claimed that Scoins was a drug addict. The caseworker wrote that she’d “abused substances for a long period of time” — an absurd claim for which the worker offered no supporting documentation. The report also claimed that Scoins had been homeless and living in a car. Again, completely false.*

*Even worse, in the same report, the caseworker claimed that Scoins’ baby had yet to be tested for drugs.*

*That wasn’t true. C.Q.’s tests were complete within days of his birth, two months before. He was negative for all drugs. ... CPS only let Scoins see C.Q. during supervised visits. And Scoins’ case-*

*worker filed paperwork to take away her other three children, too.*

*Ultimately, the agency dropped its threat; when C.Q. was nine months old, CPS finally returned him to his mother. But that was only thanks to an attorney friend who handled Scoins' case for free.*

*"I probably would not have my son back today without that," she says.<sup>30</sup>*

## Drugs

But, of course, not every allegation of drug abuse is false. And while "estimates" of the proportion of child maltreatment allegations involving drug abuse are no more than guesses, and workers have a profound incentive to guess high – few things are as likely to get a judge to rubber-stamp a removal as crying meth – there is no question that the problem of drug abuse, like the problem of child abuse itself, is serious and real.

But in these cases as well, the children are trying to tell us something. We owe it to them to listen.

As noted earlier, University of Florida Medical Center researchers studied two groups of infants born with cocaine in their systems. One group was placed in foster care, the other with birth mothers able to care for them. After six months, the babies were tested using all the usual measures of infant development: rolling over, sitting up, reaching out. Consistently, the children placed with their birth mothers did better. For the foster children, being taken from their mothers was more toxic than the cocaine.<sup>31</sup>

It is extremely difficult to take a swing at "bad mothers" without the blow landing on their children. If we really believe all the rhetoric about putting the needs of children first, then we need to put those needs ahead of everything – including how we may feel about their parents. That doesn't mean we can simply leave children with addicts. It does mean that drug treat-

ment for the parent is almost always a better first choice than foster care for the child.

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And addiction to methamphetamine is just as treatable as any other addiction.<sup>32</sup> Indeed, the director of one Arizona treatment center says: "I think it's harder to treat a pot smoker than a meth addict, because it's harder to make them see that it's hurting them. It's not hard for a meth addict to see that their life is out of control."<sup>33</sup>

Unfortunately, notes the *East Valley Tribune*, in an excellent story about treating meth addiction, "politicians, police and others have promulgated several meth myths, making the drug sound impossible to kick and demonizing its users, particularly those who have children."<sup>34</sup>

*Phoenix New Times* found that "meth-addicted moms can be good moms again ...[K]ids, in general, are better off with mom than with a foster mom. And much better off with mom than with an institution acting as mom."<sup>35</sup>

But only ten percent of addicted parents in Arizona get in-patient drug treatment – and only one percent are in programs where they can keep their children with them, even though these are the programs that are most likely to succeed, and best for the children.<sup>36</sup>

Children torn from addicted parents because drug treatment isn't available also are paying the price of panic.

It doesn't have to be this way. There are plenty of dedicated people in Arizona, both within DES and in the state's courts and legislature. It would take only one fundamental compromise to set the state on the right track:

- *The right must agree to spend more.* Spending a lot of money does not guarantee a good system, but spending at one of the lowest rates in the nation guarantees a bad one. And you can't stop CPS from taking away children needlessly by trying to starve the agency to death. (See page 12).

- *The left must agree to spend smarter.* When the Governor has managed to squeeze more funds out of the legislature, the money has gone almost exclusively to taking away more children. All that has given Arizona's children is the same lousy system only bigger. (See page 13). So the left must agree to put all new, additional spending only into safe, proven alternatives to substitute care.

- *All Arizonans must be willing to learn from the successes and failures of other states.* Arizona is a special place, but in terms of the challenges for protecting children, it is not unique. All over the country, child welfare systems are grappling with similar problems, and solving them.

## Before the Panic

The foster-care panic that began in 2003 did not take a good system and make it bad. It took a bad system and made it worse.

Two decades ago, a lawyer in Tucson tried to take on the system. Laurence Berlin alleged widespread abuse of Arizona foster children. He wrote:

*"Many of the 38 plaintiff families ... although not all of them, needed help that Child Protective Services should have provided; instead, due to dangerous defects in*

*the system, it made matters worse. The result is a range of damages such as child abuse and molestation in foster care settings, and wrongful removal of children from their homes and families ... The number and variety of injuries to these plaintiffs reflects the breadth and depth of the problems in Arizona's Child Protective Services."*<sup>37</sup>

Then in the mid-90s, came the deaths in foster care of TaJuana Davidson and China Marie Davis.

China Marie's autopsy revealed two broken collarbones, a broken left arm, a broken right rib, two fractures of the left upper arm, a fracture of the right upper arm, a broken left wrist, a broken left hand, a broken left forearm, a broken right wrist, a broken right forearm, fractures of both thigh bones and a compression fracture of the spine.

But no one suspected anything because her foster mother always dressed her in such pretty outfits.<sup>38</sup>

There also were stories, then and now, about children who died after being left with dangerous birth parents.

But in a pattern that would be repeated over and over, a double standard of "lessons learned" was applied. The deaths in foster care were written off as aberrations, fixable by tightening background checks and licensing standards and other tinkering. No one thought to ask if foster care itself might be unsafe, and if more should be done to keep families together.

But at least when China Marie Davis and TaJuana Davidson died, Arizona media respected their memories enough to take notice. During the current foster-care panic, deaths in substitute care have gotten little attention (See *Newspapers mourn some children a lot more than others*, page 40).

## The panic begins

Earlier in this report, we cited a new study that traces the outcomes for more than 15,000 children who were investigated by

# Memo to the left: PLEASE SPEND SMARTER

Suppose when he was Attorney General, John Ashcroft had proposed anti-terrorism legislation with the following provisions: Special anti-terrorism police can search any home and strip-search any occupant without a warrant. They can detain any member of the household for at least 72 hours before they even see the inside of a courtroom. In fact, detention probably will last for the duration of the proceeding because no judge in the special anti-terrorism court wants to look “soft on terrorism.”

The standard of proof never reaches “beyond a reasonable doubt” as in criminal cases. Most of the time, the standard is “preponderance of the evidence” -- the same standard used to determine which insurance company pays for a fender-bender. Poor people arrested under this statute get a lawyer, but the lawyer has hundreds of other cases and lacks the time and resources to mount a defense.

Judgment is passed in secret tribunals closed to the press and the public.

Had Ashcroft proposed such a law the left would have been furious. The American Civil Liberties Union would have declared a state of emergency. But what we have just described *is* the law in Arizona, and most other states, when it comes to child abuse and neglect proceedings.

The victims of this near-eradication of due process are not adults accused of terrorism, they are mostly impoverished children. Because when their parents’ poverty is confused with neglect, the children are the ones who wind up trapped in foster care.

But it’s the political left that fights most fiercely to keep this ultimate example of “domestic spying.” Indeed, the quickest way to get a liberal to abandon everything he claims to stand for is to whisper “child abuse” in his ear. Instead of standing up for civil liberties the left responds by saying this system will work just fine – if only we spent more money on it.

Yet it is the left that also claims to support prevention. It is the left that says if only we invest more in a given problem before things get bad, we’ll reap long-term savings. And it’s the left that says if we built a true infrastructure of child abuse prevention, it wouldn’t be necessary to have so much foster care.

But when Governor Napolitano asks for more money, she seeks a pittance for prevention and far more for even more foster care.

Arizona needs to invest its money in primary prevention, family support and also, family preservation.

These are not interchangeable. Primary prevention and “family support” programs, like Healthy Families Arizona are an excellent investment. They also are popular with the “foster-care industrial complex,” the agencies that survive on a steady supply of foster children, because they cast an enormously wide net, offering help to every “at risk” family. But that is o.k. with a lot of us who want to curb coercive intervention into families because these programs also are strictly voluntary.

But precisely because it doesn’t threaten the child welfare establishment, this “goody-two-shoes prevention” tends to be the only kind that gets wholehearted support from organizations like the Children’s Action Alliance and various child welfare “providers.”

But child welfare systems need a full menu of help for families, including family preservation – programs that intervene after a case has come to the attention of CPS, but before a final decision to place a child. Because this kind of prevention narrows the net of coercive intervention into families, it tends to be less popular politically.

Any serious commitment to prevention requires both kinds. It also requires bolstering due process protections for families.

While there is an urgent need for Arizona to spend more, it should not be more of the same. Arizona needs to spend smarter.

And that is why there is potential for compromise.

# Memo to the right: PLEASE SPEND MORE

It is not true in every state, but in Arizona, child welfare is a problem that badly needs to have more money thrown at it.

By taking state-by-state estimates of total child welfare spending prepared by the Urban Institute for the 2004 fiscal year<sup>39</sup> (the most recent for which data are available) and dividing the totals by the number of impoverished children in each state, one can get a rough sense of comparative state spending. It's only a rough sense because it is, in fact, very difficult to measure total spending in each state.

But such a comparison shows that Arizona spends proportionately less than all but six other states. Arizona spends on child welfare at a rate more than 40 percent below the national average.

Those opposed to more spending point out that there is no automatic correlation between high spending and a good child welfare system. But that is only half the story. There *is* a correlation between low spending and a bad child welfare system.

Yes, conservatives are right when they point out that there are states that spend vastly more than Arizona and their systems are just as bad. Rhode Island probably spends, proportionately, four times as much, and the results for children still are lousy. But that's because Rhode Island throws the money away institutionalizing children at one of the highest rates in the country, and institutional care is both the most expensive form of care and the worst for children.<sup>40</sup>

What too many conservatives have not acknowledged, however, is the flip side. Of the few states or localities that have relatively good child welfare systems, all spend proportionately more than Arizona. Even Alabama spends more. No child welfare system in the country, state or local, has successfully reformed while spending as little as Arizona.

So while spending more does not guarantee success, refusing to spend more guarantees failure.

Some on the right also have argued that the Department of Economic Security should prove it can do better before it gets any more money. But that's like demanding that a starving man carry a hundred pound weight up a mountain before he is fed. You've got to give him the strength to make the climb first, then hold him accountable if he doesn't get there.

Some conservatives also believe that wrongful removal can be curbed by keeping the DES budget low. But it can't. That's because taking children from parents is the most politically popular task the agency performs; and it's going to be the last thing to go in tight budgetary times.

In addition, as a result of an automatic, open-ended federal entitlement, a relatively small state investment brings in a lot of federal foster care dollars (see page 35.) This does *not* mean, as some on the right have alleged, that the state "makes money on foster care," but it can provide a strong incentive to use foster care instead of alternatives, and it does make foster care even harder to cut.

So the alternatives to removal will go first. And besides, whenever there is a showdown, the governor paints the legislature as not caring whether children die, and the legislature gives in. The result: more money for investigations and foster care. So you wind up with the same lousy system, only bigger.

So yes, Arizona needs to spend more. But that doesn't mean the money should keep going into more investigations of more families, and more foster care. To come back to the analogy to DES as a starving man: He needs to be fed – but it should be a healthy diet of prevention, family preservation, and due process; not more foster care junk food.

And that is why there is potential for compromise.

child protective services from 1990 through 2002. The study compares children placed in foster care to equally maltreated children left in their own homes. On average, the children left in their own homes were far less likely to become pregnant, to be arrested or to wind up unemployed.

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**“Err on the side of protecting the child,” Governor Napolitano said, “and we’ll sort it out later.” More than four years later, it still hasn’t been sorted out.**

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Among the implications: It may well be possible to estimate how many more Arizona children are doomed to pregnancy, arrest and unemployment as a result of one fateful speech by a new Governor four days after taking office.

“Err on the side of protecting the child,” Gov. Janet Napolitano told the annual conference of the Children’s Action Alliance, “and we’ll sort it out later.”<sup>41</sup>

More than four years later, it still hasn’t been sorted out.

The governor was not alone. CAA had invited one of the nation’s leading crusaders against keeping families together to be the keynote speaker at the conference. In 2003, the entire CAA conference was a pep rally for panic.

And, according to the *Arizona Republic*, the crowd went wild. The caseworkers were “thrilled,” the newspaper declared. “It’s exciting. It’s energizing, and it’s just very encouraging,” said Mary Lou Hanley, who was then in charge of child protective services.<sup>42</sup>

The *Republic* itself was even more thrilled. Story after story, commentary after commentary, editorial after editorial echoed

the Governor. (Or, arguably, the Governor echoed the newspaper, which had begun its own crusade the previous August.) It culminated in an entire Sunday opinion section devoted to bashing efforts to keep families together.

Not that it wasn’t fair and balanced. The Governor’s attack on family preservation from the left<sup>43</sup> was scrupulously balanced by former Maricopa County Attorney Rick Romley attacking from the right.<sup>44</sup>

In fact, even before the Governor made her speech in January, the panic was underway.

The panic actually began four months earlier, when the *Republic* discovered the death of Anndreah Robertson, a ten-day-old infant placed with her grandmother. According to news accounts, she died in her grandmother’s apartment of exposure to second-hand smoke from crack cocaine. Anndreah actually died in November 2001. But it was not until nine months later that the story caught the attention of the *Republic*.<sup>45</sup>

As soon as it did, however, the Children’s Action Alliance began spinning the story as supposedly proving that CPS was bending over backwards to keep children with abusive parents, and the *Republic* promptly bought it.<sup>46</sup>

The Governor’s speech didn’t start the Arizona Foster Care Panic. But it kicked the panic into overdrive. During the six months ending March 31 2003, removals already soared 18 percent over the same period the year before.<sup>47</sup>

Soon, the panic took its toll on children. As caseloads soared, CPS deliberately overcrowded foster homes,<sup>48</sup> because there was no place else to put children, dramatically increasing the risk of abuse in foster care. Infants and young children began languishing in the worst form of placement of all, parking-place shelters.

And the panic saw its first casualties.

Patrick Traufler was born two weeks after the Governor made her speech. He had

drugs in his system. We will never know if Patrick could have lived safely with his mother had they been placed in a drug treatment program together. But even if he couldn't, we do know this: The good, safe foster home that should have been available for Patrick almost certainly was taken by some other child who never needed to be torn from her or his parents.

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### Less than two months after he was born, Patrick Traufler was dead and buried, in every sense of the term.

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Instead, he wound up in the foster home of Angela Monroy. Less than two months later, Patrick was dead. Monroy has been charged.

According to *Phoenix New Times*, Monroy had another young foster child and two young children of her own. She was left to raise them herself when her husband worked a night shift.

Even after she was charged with Patrick's death, she got far more benefit of the doubt than is ever given to Arizona birth parents charged with abuse.

"It wasn't as if Ms. Monroy was an evil person who set out to kill the child," the first prosecutor assigned to the case told *New Times*. "She was a young mother in over her head, who started out with good intentions, but was allowed to be in over her head by the state."<sup>49</sup>

In truth, a foster-care panic leaves *everyone* in over their heads. *New Times* reported that CPS had no actual caseworker to check out the Monroy house before placing Patrick there – so the agency sent an intern. The intern already knew the family personally – she told her supervisor and the supervisor either had no problem with that, or simply had no one else to send.

We would know almost nothing about this if not for *New Times*, which looked at the case as part of a comprehensive cover story on CPS late in 2006. From the day he died to today, *The Republic* almost completely ignored Patrick Traufler.

The one story we found that was more than a recounting of routine developments showed more interest in, and sympathy for, the area's foster parents than the paper ever did for Patrick. That story began as follows:

*For Arizona foster mothers, the pay is \$30.44 a day, which amounts to \$1.27 an hour for a special-needs baby requiring around-the-clock care.*

*Not much for what can be a very demanding responsibility, according to licensed caregivers in the state.*

*They say it is a love of children, not money, that motivates them to open their homes to abused or neglected babies.*

*And that's why they are troubled by a murder charge against a west Phoenix woman, one of their own, who is accused in the fatal shaking of a 6-week-old foster boy.*

*They wonder if participation in a support system for foster mothers could have spelled a critical difference for Angela Marie Monroy.<sup>50</sup>*

No one has ever explained why. But Patrick's death is an inconvenient contradiction of the thesis that child removal equals child safety, and CPS needs to take away far more children – in other words, "err on the side of protecting the child, and we'll sort it out later."

Less than two months after he was born, Patrick Traufler was dead and buried, in every sense of the term.

But he may not have been the only early casualty.

In June, 2003, Phoenix police found seven-year-old Isaac Loubriel huddled in a closet, emaciated, and wearing only a diaper. The police were there at the suggestion

of Isaac's CPS caseworker, who was too busy to see for himself.

According to the *East Valley Tribune*:

"One of the more troubling aspects of this case is that when the children's grandmother told a CPS caseworker earlier this month that Isaac was being abused, he told her *he was too busy with other cases to respond*."<sup>51</sup> [Emphasis added].

### **The Governor's definitional obsession**

Much of the attention during the panic focused on an odd obsession from the Governor's office – the definition of child protective services. The claim was made, then repeated over and over, that CPS workers were leaving children in danger because the definition in state law didn't emphasize protecting children over preserving families. In truth, CPS was not confused at all.

Consider what happened the one time we know of in the past ten years in which the *Arizona Republic* examined the plight of a falsely accused family in a major news story. The story appeared in May, 2002, several months before the panic began. Unlike the overwhelming majority of families caught up in the system, this family was middle-class, and the false allegation sprang from a faulty medical diagnosis.

According to the story, the then CPS program administrator, Flora Sotomayor was not confused about CPS' mission at all. Confronted with the harm done to the children in this case, "Sotomayor doesn't worry about lawsuits or critics. She would rather apologize if allegations turn out to be false than leave a child to be hurt again."<sup>52</sup>

Further evidence that definitions were not the problem can be seen in the fact that, by the time the definition actually was changed, in December 2003, removals already had soared.

Rather, the reason Arizona CPS was leaving some children in dangerous homes is the same reason every CPS agency leaves

some children in dangerous homes: Caseworkers are too busy to make good decisions. A foster-care panic puts them in the position of Isaac Loubriel's worker – too busy even to look into a case.

In fact, by the time Isaac was found, most of those who started and fomented the panic were having second thoughts. Indeed, within six months almost everyone had changed their minds; though it is unlikely that anyone ever will admit it.

The rhetoric from the governor's office, and the *Republic* changed significantly. The op eds stopped equating child safety with child removal. Indeed, the Governor's advisor for human services, Noreen Sharp, wrote that "[I]t is both simplistic and erroneous to equate child protection with child rescue or removal from home."<sup>53</sup> And when the Governor actually signed the bill that included the change in the definition of CPS, she didn't even mention that provision.

Even CAA changed its tune to the point that, at its 2004 Annual Conference the keynote speaker was the former head of the Illinois child welfare system – the one who had helped stop the panic and dramatically reduce foster care in that state.

(Well, *some* in CAA realized the panic was backfiring. In April, 2003, Beth Rosenberg, CAA's Director of Child Welfare and Juvenile Justice, shouted at the author of this report that "It has become almost impossible to remove a child from the home in Arizona!" Even as she was shouting those words, removals since the panic began already had climbed by 18 percent over the same period the year before.<sup>54</sup>)

More than the Governor's rhetoric had changed. She had hired to run the Department of Economic Security a nationally-known reformer who had made his reputation by using family preservation to keep children safe.

By zeroing in on the primary cause of actual child maltreatment and the issue most often confused with child maltreatment – poverty – Dave Berns had significantly

reduced placements in the child welfare system in El Paso County, Colorado. And he had improved child safety.<sup>55</sup> As the *Republic* noted in a 2004 profile, the classic Dave Berns story

*“involves a great-aunt in Colorado who took in seven nieces and nephews when their mother no longer could care for them because of drug addiction.*

*“Facing eviction, the loss of her car and \$5,000 in debt, the great-aunt called child-welfare officials to give up the kids.*

*“A child-welfare supervisor asked Berns, ‘I can’t give her \$5,000, can I?’ They worked out how much it would be to place the seven children in foster care for a year: \$168,000.*

*They got her the \$5,000. It was a wise use of money.”<sup>56</sup>*

Before he arrived, Berns clearly had been reading Arizona newspapers. So he found some of the facts on the ground surprising: “When I got here, I thought maybe we had a big, massive family preservation program in Arizona,” Berns said. “I have not found that program yet.”<sup>57</sup>

Given his track record it’s no wonder an *Arizona Republic* headline asked “Can star czar rescue CPS?” Given what he was up against, it’s no wonder that, even for someone as talented as Berns, the answer proved to be no.

The hiring of Berns and the change in rhetoric made it clear: If they had it to do over again, it is unlikely that anyone who pushed for the huge surge in child removals, the Governor, the *Republic* or even CAA, would do it that way again.

What caused the change?

First, the fact that the consequences became so clear so soon – the overcrowded foster homes, the children piling up in shelters. Second, NCCPR came to Arizona at the invitation of former State Rep. Laura Knaperek. We met with journalists, legislators and DES staff. But we suspect that, most important of all, Noreen Sharp, real-

ized that “err on the side of protecting the child and we’ll sort it out later” was a disaster for the state’s children, and persuaded the governor to reconsider.

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**“When I got here, I thought maybe we had a big, massive family preservation program in Arizona. I have not found that program yet.”**

**-- Dave Berns, October, 2003**

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But the very fact that no one will admit this has helped keep the panic going. (Indeed, the *Republic* insists, to this day, that, while it would be nice if someday there are alternatives, the panic was necessary at the time and, presumably, still.) So have other factors discussed later in this report. Perhaps most important: It is much, much easier to start a foster care panic than to stop one.

### **The investigate-every-case debacle**

And then, in mid-2004, another key error made the panic even worse.

Among Governor Napolitano’s promises, incorporated into legislation passed in 2003, and taking effect in mid-2004, was a pledge that CPS would “investigate every report.”

In some quarters, this promise has been misunderstood.

When someone calls a state child abuse hotline, that is known as a “referral.” In every state, such referrals are screened. Criteria vary from state to state, but typically, if the call lacks even the most basic information for an investigation, or if the allegations, even if true, don’t meet the definition of maltreatment in state law, they are screened out.

Arizona screens out reports at a rate that is about the national average.<sup>58</sup> The changes to state law in 2003 did not change that.<sup>59</sup> Rather the change in the law was aimed at the next step in the process.

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**Arizona botched differential response from the start. For one thing, the legislature thought it was approving something completely different.**

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Starting in 1998, Arizona adopted an approach that has been used successfully in at least a dozen other states. It goes by a variety of names, “two tier,” “differential response” and “dual track” among them.

Cases that are deemed by the hotline to be likely to be less serious are either referred to private agencies under contract or simply handled differently by CPS, with workers providing an “assessment” and offers of voluntary help instead of a full-scale coercive investigation of the family.

The approach makes sense for a variety of reasons. For starters, a child abuse investigation is not a benign act.

Having a stranger come to the door – or your school – pull you aside and ask questions about the most intimate aspects of your life can be an enormously traumatic experience for a child; and the younger the child the greater the trauma. It can leave lifelong emotional scars.

Three of the nation’s leading scholars of child welfare in the 20<sup>th</sup> Century, the late Anna Freud, Joseph Goldstein and Albert J. Solnit wrote that children

*“react even to temporary infringement of parental autonomy with anxiety, diminishing trust, loosening of emotional ties, or an increasing tendency to be out of control. The*

*younger the child and the greater his own helplessness and dependence, the stronger is his need to experience his parents as his law-givers -- safe, reliable, all-powerful and independent . When family integrity is broken or weakened by state intrusion [the child's] needs are thwarted and his belief that his parents are omniscient and all-powerful is shaken prematurely.”<sup>60</sup>*

Even worse, when the allegation is physical abuse the investigation often is accompanied by a stripsearch by a caseworker or a doctor looking for bruises. If anyone else did that it would be sexual abuse. And if the allegation *is* sexual abuse, the medical exam can be a lot more traumatic.

But differential response also has another advantage. Without such a program hotlines have only two options when they receive a report: “All” or “nothing;” that is, do the full-scale investigation with all the attendant trauma, or do nothing at all. By providing a third option, differential response both narrows and widens the net, bringing help to families that otherwise would get nothing at all.

A review of the literature, commissioned by the federal government, revealed that all studies done on differential response found better safety outcomes.<sup>61</sup> A more recent independent evaluation of Minnesota’s pilot differential response system also found that child safety improved.<sup>62</sup>

But Arizona botched differential response from the start. For one thing, the legislature thought it was approving something completely different.

It’s not entirely clear what lawmakers thought they were voting for. The sponsor of the bill to create Family Builders actually thought his legislation called for an entirely different kind of program, called Intensive Family Preservation Services.<sup>63</sup> This is an outstanding approach with a far better track record for safety than foster care<sup>64</sup> when such interventions follow the model of the first such program, Homebuilders in Washington State. Arizona ur-

gently needed such a program a decade ago, when it had a tiny pilot version, and it still does. But this program has nothing to do with differential response. The legislature apparently confused Homebuilders with Family Builders.

And, it seems, some of the agencies hired to provide the service were less than enthusiastic.

Family Builders was supposed to be used for cases in which, for example, a home was filthy, or parents lacked enough food for a child or were leaving their children without enough supervision; not for cases in which parents beat, torture or, as in one high-profile Arizona case, cage their children. And not for cases where the child would be in imminent danger if the family turned down voluntary help.

Keys to such a program's success are availability of services, particularly concrete help like rent subsidies and day care, and also an attitude of empathy and respect for troubled families – a helping hand instead of a wagging finger.

Not exactly the approach taken in this op ed column for the *East Valley Tribune*, in which Family Builders is attacked because families can turn down the help.

*It's kind of like being an alcoholic; you have to admit you have a problem before any real change can occur. How many violent or neglectful parents are willing to stand up and announce, "My name is . . . and I'm a child abuser?" ...*

In fact, one should not have to say "My name is ... and I'm a child abuser," because, when differential response programs are working correctly, those in them generally are not child abusers.

The critic goes on to complain about a proposal to limit Family Builders to referrals instead of providing services.

*In other words, agencies ... would receive a referral, make one home visit and be allowed only to offer suggestions on where the family might go for assistance.*

*"Gee, if you're having trouble keeping those kids in their cages, try PetsMart."<sup>65</sup>*

Stereotyping everyone in Family Builders as a potential kid-cager would be bad enough had this attack come from one of the usual suspects, like the Governor or the Children's Action Alliance or a certain prominent newspaper columnist.

But it didn't. This smear came from a representative of one of the contractors that actually provided Family Builders services – Lane Barker, then director of operations, and now executive director of Devereux Arizona. Imagine being an overwhelmed single parent with a messy home and having Mr. Barker come to your door to offer "help" and it's easy to see why differential response didn't work too well in Arizona.

And Devereux is in no position to be throwing stones.

The Arizona operation is part of a huge nationwide chain of substitute care services, with a heavy emphasis on group homes and residential treatment centers.

Things haven't always gone well.

*San Diego Union Tribune, May 3, 1999:*

*Although the county's latest assessment of Devereux says, "Appears to be a well-run facility," there are troubling indications that all may not be well.*

*State licensing authorities called a meeting with Devereux officials in February to discuss "overall problems with the selection and hiring process of staff," licensing records state. That meeting was prompted by concerns that two staff members may have helped a former Devereux employee rob one of the Devereux homes at gunpoint, "putting the clients at risk," according to a licensing report. And licensing officials are continuing to work with the home to resolve the concerns.*

*At another Devereux facility, a teenage girl fell victim to the seductive pressure of a male child-care worker who coerced her to have sex with him on more than two*

*dozen occasions in 1997, according to a complaint substantiated by state licensing authorities.*

Miami Herald May 11, 2001:

*A consultant hired by the state Department of Children & Families to study residential treatment centers for Florida foster kids reported in February his "critical" concern over the "widespread use" of psychiatric drugs on children in state care. ...*

*At Devereux Florida Treatment Network, another treatment center, the consultant said 80 percent of the residents were being medicated. ...*

*"The use of this medication allows the individual a level of control of their behaviors and assists them in gaining insight to their problems and thus [to] take advantage of the program," the consultant quoted a Devereux doctor as saying.*

Washington Post, June 16, 2003:

*At first, Kenny liked Devereux.*

*"It looked all pretty from the outside, like a resort almost," he would recall.*

*Devereux counselors told Kenny he could earn privileges with good behavior. But Kenny, then 15, stumbled. He smoked marijuana and had sex with girls on his unit. There were rival factions of teens at the center, and they frequently got into fistfights. Kenny was among them. Combative children were strapped into "safety coats" and injected with Thorazine, a powerful psychotropic drug, Kenny later would say. ...*

*The streets had prepared Kenny for the treatment center. In many ways, it was a culture he recognized. Tough kids were respected. Weak ones became prey. Kenny was one of the tough ones. ...*

Devereux would argue that these are isolated incidents, and we know of no one who claims otherwise. But the same would apply to parents in Family Builders who brutalize and cage children.

So why would Devereux attack Family Builders this way?

Perhaps because Barker's proposed solution was to force parents to accept the services the Family Builders "provider" offered – a good deal for providers. Or perhaps because a lot of the big money in child welfare comes from foster care and, especially, residential treatment, where centers may charge \$71,000 or more per year per child<sup>66</sup> even though two scholarly reviews of the literature<sup>67</sup> have found, and even the former head of the trade association for agencies, the Child Welfare League of America, admits<sup>68</sup> – *there is little evidence that residential treatment does children any good.* Community-based alternatives, such as Wraparound programs work better and cost less.

Furthermore, this commentary was written just as Dave Berns was arriving in Arizona, and Berns was known for reducing institutionalization in El Paso County.

But by the time Berns arrived, the governor already had been demanding that CPS investigate every report, and Berns said he agreed. He said he wanted CPS workers to see the cases first and then be able to assist families in getting the help they needed.

We felt it would be better to fix Family Builders instead of abolishing it. But we also felt that, given Berns' track record, he was entitled to whatever structure he said he wanted, so we did not oppose this.

It turns out, we were both wrong.

With the abolition of differential response, 5,000 cases each year that used to be diverted cascaded down upon CPS workers already frantic because of the foster care panic. Now, as noted earlier, 40 percent of the reports investigated by CPS every year are classified as minor. The infrastructure of prevention Berns wanted still doesn't exist.

Aha, some will say. But the *Arizona Daily Star* recently reported on a case CPS *thought* was low-risk only to find children living in hideous squalor. And it turned out CPS overlooked the case for a year.<sup>69</sup>

Doesn't that show the need to be even more aggressive about investigating every case?

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By September 2005, even CPS admitted many of the children they had taken over the previous two years could have remained safely in their own homes had the agency intervened earlier and offered the right kinds of help.

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No, it doesn't. On the contrary, it shows what happens when you flood CPS workers with 5,000 additional cases during a foster-care panic.

If Arizona had a true differential response program, a well-trained worker would have been sent out on this particular case. As soon as she saw – and smelled – the home, she would call CPS and get their immediate attention.

Instead, this case got lost amid all the others cascading down upon workers. So instead of being investigated within seven days, as regulations require, it didn't get investigated for a year – and only then because sheriff's deputies happened to be called to the scene.

So the Arizona Foster Care Panic rages on. As noted at the start of this report, by October, 2004, the number of children torn from their homes was up 40 percent from two years earlier. Removals have remained at this same level ever since.<sup>70</sup>

By September 2005, even CPS admitted many of the children they had taken over the previous two years could have remained safely in their own homes had the agency intervened earlier and offered the right kinds of help.<sup>71</sup>

That month, DES released a "Blueprint" for reform. But the Blueprint also

revealed the extent to which Berns had been stymied by Arizona politics and the foster-care panic. The plan called for reducing the number of children in foster care by June 30, 2006 by only five percent.<sup>72</sup> Even that modest goal was not achieved; the number of children in care declined by less than one percent.<sup>73</sup>

Perhaps the saddest day of all was August 24, 2005.

That morning, readers of the *Arizona Republic* awoke to one of many editorials praising Governor Napolitano for supposedly putting "the safety of children first" when she demanded that far more children be torn from their homes. "It was an overdue change," the *Republic* declared.<sup>74</sup>

At the same time, Emily Mays, a 16-month-old foster child was being rushed to a hospital in Tucson with life-threatening injuries.

That same night, as other *Republic* subscribers were reading in that same editorial that "When a child is taken from an abusive home, most observers would say she's been 'rescued,'" Emily Mays was taken off life support.

A pathologist determined that Emily died as a result of blunt-force trauma. The foster parents face charges of felony child abuse.<sup>75</sup>

Just three months later, another Tucson foster child, Dwight Hill, would die. The foster mother was convicted of reckless child abuse and sentenced to ten years probation.<sup>76</sup>

But a check of the *Republic's* online archives indicates that the *Republic* has found neither death worthy of a single story. Understandable, some might argue, since these cases took place in Tucson. But the *Republic* circulates statewide, and is viewed as Arizona's "newspaper of record." And the deaths of children allegedly at the hands of birth parents, also in Tucson, have been mentioned in five stories just since March of this year. In addition, the *Republic* went to court to obtain all of the records in those

cases. It has shown no similar interest in Emily or Dwight – and showed no such interest in Patrick Traufler, who died in the Phoenix area.

Even in Tucson, an NCCPR check of online newspaper archives finds that there have been far more stories about the children allegedly killed by birth parents in 2007 than about the dead foster children going all the way back to 2005. And the disparity is understated since it doesn't include all the stories spun off from the more recent cases, attacking CPS for not being aggressive enough about tearing apart families. (See *Newspapers mourn some children a lot more than others*, page 40.)

The events of August 24, 2005 show that irony isn't dead. If only the same could be said for Emily.

### **Training is no substitute for due process**

If there is one state that should understand the importance of open, accountable systems that preserve the rights of all when children's futures are at stake, it is Arizona. Because Arizona is where the "go away and leave it to the experts" approach, and the "we're doing all this for your own good so you have no rights" philosophy were tested and struck down by the U.S. Supreme Court - in the arena of juvenile justice.

Although it sounds like something from a distant time or another nation, it happened in the 1960s in Arizona:

A 15-year-old boy, Gerald Gault, allegedly made an obscene phone call. He was arrested. He had no right to a lawyer. He had no right to confront the witnesses against him - there were none. He was not told of his right against self-incrimination. No record was kept of the testimony.

The judge sentenced him to the state juvenile reformatory – for six years.

It could happen because juvenile courts supposedly were intended to rehabilitate, not punish, and everything was being

done "in the best interests of the child." It was done in secret in order to "protect" the child, and it was all left to the experts because, of course, they knew best.

Forty years ago, the U.S. Supreme Court ruled that you can't do that to a child in America. "Under our Constitution," the court ruled, "the condition of being a boy does not justify a kangaroo court."<sup>77</sup>

Unfortunately, the kangaroos hopped over to child welfare.

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**Imagine if anyone were to argue that criminal trials should be closed to press and public because if we just train police well enough, they'll never arrest anyone who is innocent.**

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Consider the arguments made by two opponents of opening records after child abuse fatalities – both legislators. One has, in the past, derived part of his living from the child welfare system. The other makes all his money (aside from his legislative salary) that way.

The lawmakers don't even want public hearings. According to the *Arizona Daily Star*:

*"I don't see how these hearings are going to help child welfare in the state," [Rep. David] Bradley said last week.*

*[Rep. Pete] Hershberger, a Republican, and Bradley, a Democrat, warn that lawmakers who don't fully understand the extremely sensitive, potentially dangerous and grinding work of Child Protective Services can do more harm than good with their push for openness. Instead of stripping confidentiality rules, they say, lawmakers should give CPS enough highly trained*

*caseworkers and substance abuse treatment resources.*

*"The quality of the CPS worker should improve," Hershberger said. The more qualified people who can look at a case and evaluate the circumstances, the better the result for kids, Bradley said.*

In other words: We know best, the rest of you, butt out. Give workers enough training, it is argued, and they'll never make a mistake. They'll never destroy an innocent family, and they'll never leave a child in danger, in his own home or a foster home, despite warning signs. Or if, by chance they do, the system will cleanse itself, entirely behind closed doors.

Imagine if anyone were to argue that criminal trials should be closed to press and public because if we just train police well enough, they'll never arrest anyone who is innocent.

Hershberger says we should defer to his wisdom "as a licensed counselor and a human services professional for more than 30 years..." when he tells us that more openness will traumatize children. That's exactly what many of his fellow "experts" said in more than a dozen other states when they opened court hearings. But many of them now admit they were wrong, and not one state which opened those hearings has seen a reason to close them again. (For a detailed discussion and examples, see Recommendation 9 below.)

In fact, Hershberger seems to view the whole idea of a trial as simply a ritual CPS must endure before it gets whatever it wants. He opposed a proposal to raise the standard of proof CPS must meet before tearing a child from everyone she knows and loves on grounds that "it would squander already limited resources on lengthier court processes..."<sup>78</sup>

Well, yes. If CPS actually had to show a child was in danger after taking him away it might require a little more work.

Given the stakes for the child, however, it doesn't seem to be too much to ask. (Yes, we said *after*, not *before*; as is discussed below, CPS gets a free shot at any child in the state for three to seven days. During that time the agency need prove nothing to anyone.)

But even as he claims that families would be protected if everyone had training and expertise, Hershberger, and other opponents of real due process, simultaneously claim that, on this score, everything is fine right now.

That is not unusual. Indeed the quickest way to know if a child protection agency or its backers are being disingenuous is if they speak of due process as if it exists. So Hershberger tells us:

*Before the child is made a ward of the state, CPS presents its case to the court, where parents are provided an attorney. This attorney will be with them throughout the process. If parents disagree with the outcome of a CPS investigation, they can appeal the decision, again, with an attorney provided to them.*<sup>79</sup>

Similarly, former Children's Action Alliance president Carol Kamin blithely reassured Arizonans that "Arizona's CPS system has an extraordinary number of checks and balances to prevent children from being removed from their homes unnecessarily."<sup>80</sup>

That's the Disney version. Here's how it works in real life:

For starters, a child can be trapped in foster care for days, maybe a week *before* any court makes that child a ward of the state. As in every other state, caseworkers have the right to take a child entirely on their own authority whenever they deem it necessary. In some states, caseworkers can remove children themselves, in others they call law enforcement to do it for them. In Arizona, this means that CPS has a free shot at any child in the state for at least 72 hours.

# When a legislator runs a foster care agency

Imagine the reaction if, when Congress had to decide how much to spend on the military and what to spend it on, one of the Members of Congress voting on the issue was, himself, the CEO of a defense contractor.

Imagine the response if a Congressional committee was voting on whether or not to investigate the causes of high gas prices – but one of those voting was both a Member of Congress and, say, the CEO of Exxon-Mobil.

But apparently, the military-industrial complex is one thing, the foster care-industrial complex, that network of private foster care and residential treatment “providers” paid for each day a child is in one of their homes or institutions – is another; at least when we’re talking not about Congress, but about the Arizona Legislature.

Consider the case of Rep. David Bradley of Tucson. Bradley is an outspoken supporter of hiring more CPS caseworkers. And he is an outspoken opponent of recent efforts to make the system more open.

But Bradley holds another job: He is the longtime president and executive director of La Paloma Family Services, a private agency that provides foster care, residential treatment and other services to children ages 12 to 18, including those referred by CPS.

There is no reason to think that Bradley is ill-motivated. He might well take the same positions no matter what his full-time job. But the fact remains that when Bradley votes for more money for CPS caseworkers, he may be increasing the likelihood that more will be spent on his own agency. And if he votes in favor of one program and against another, that also may affect his agency.

Yes, Bradley also supports things NCCPR favors, such as more drug treatment. But all private agency chiefs say they also support help for families – as long as there’s enough money left over after the foster care and the residential treatment are covered – and foster care and residential treatment are so expensive that they eat up a lot of the money. When Bradley votes to fund any service that La Paloma provides, whether we also favor it or not, it still raises questions – though it is perfectly legal.

Similarly, NCCPR agrees with those who feel that young people who have grown up in foster care should be able to stay there until they are 21, instead of being thrown out onto the streets at 18. (When it’s a foster home versus the streets, the foster home is likely to be the less detrimental alternative.) But the questions still arise when Bradley sponsors such a bill, as he did during the most recent legislative session (SB 1111).<sup>81</sup>

Bradley says he does not recall sponsoring that bill. But he says that under House ethics rules, as long as more than ten providers are offering a given service, there is no conflict in his voting to fund that service in general. There are many more than ten providers offering substitute care services, and Bradley notes that La Paloma gets a very tiny share of the DES budget.

More generally, regardless of the standard in House ethics rules, Bradley says “If there was a connection between my agency benefiting to the exclusion of other agencies then I would see that as a problem.” Asked if it’s a problem if *all* agencies benefit, he replied: “I don’t see that as a big issue.”<sup>82</sup>

Another potential conflict arises over the issue of openness. According to the *Arizona Daily Star*, Bradley and Rep. Pete Hershberger strongly oppose more transparency from CPS. They even oppose efforts by their colleague, Rep. Jonathan Paton, to open to the press and the public a hearing on recent fatalities scheduled for the end of August. Bradley and Hershberger told the *Tucson Citizen* that, in effect, if the state just spends enough on CPS, everyone there will be professional enough to do the right thing, so it’s fine if it’s done in secret.<sup>83</sup>

In an interview with NCCPR, Bradley explained that “I am completely in favor of as much openness as possible as long as it’s not deleterious to the individual children or their families or their siblings or other people.”<sup>84</sup>

But what if, at some point, Bradley’s own agency were involved in a controversy over a child abuse fatality or other problem? The case of Dwight Hill illustrates how that could have happened. Dwight’s foster mother was convicted of reckless child abuse and sentenced to ten years probation.

At one time, before the child ever was placed there, the foster home where Dwight Hill died was overseen by La Paloma Family Services. La Paloma had nothing to do with the placement of Dwight Hill in the home, however. By then another agency was overseeing the home.<sup>85</sup>

Bradley argued that if his agency ever were involved in a tragedy, his status as a legislator would lead to more scrutiny, not less.

But should Bradley be speaking out for secrecy in such cases, and possibly be in a position to vote on the extent to which hearings and records are open in general, when at some point such hearings and records might touch on the work of his own agency?

Replied Bradley: "I don't see a conflict there."<sup>86</sup>

Rep. Hershberger also may have a conflict, though again, nothing that violates any law. According to *Phoenix New Times*:

*Before he was elected to the House, Hershberger was a full-time employee at a Tucson social service agency called Open Inn. Tax records show that Open Inn gets the bulk of its funding - more than \$3 million annually - from government contracts. As Hershberger acknowledges, some of those contracts are with CPS's parent agency.*

*It's not clear just how much he's being paid. The personal disclosure form that Hershberger has on file with the secretary of state shows only that the total is over \$1,000. He claims he hasn't billed Open Inn in months and that the company's ties don't factor into how he feels about CPS. (And what he's doing is not a legal conflict of interest, according to Arizona's rather lax laws regarding legislators.)<sup>87</sup>*

But never let it be said that Hershberger lets down his guard on matters of potential conflict of interest or disclosure. It was thanks to Hershberger's diligence that the world learned that the Arizona Family Rights Advocacy Institute had taken a position on legislation without filling out the myriad forms and paying the small fee required to register under state lobbying laws.

Sure, the institute's sole staff is Robin Scoins, whose story is told elsewhere in this report. Sure, she has no salary. Sure, she pays all expenses out of her own pocket. Sure, because of those miniscule expenses she often doesn't even have the money for both phone service and e-mail – let alone wining and dining lawmakers. And sure, Hershberger is the most prominent opponent of curbing the power of CPS, and so, almost always disagrees with Scoins. But Hershberger assures us that reporting a volunteer advocate to state officials with the power to prosecute her was not meant to intimidate her into silence. It was, Hershberger said, a matter of principle.<sup>88</sup>

In the end, the state didn't prosecute, but Scoins had to agree to speak only as a private citizen, not on behalf of AZFRAI. As a result, she says, she can't speak for others who are afraid to tell their stories for fear of retaliation from CPS. But legislators remain free to vote for bills that might benefit their agencies.

(Hershberger himself estimates five to seven days.)<sup>89</sup>

That may not seem like much, but children don't comprehend time the way adults do. The younger the child, the more slowly time seems to pass. For a three-year-old, torn from everyone she may know and love, it can be an eternity. And how, exactly, does one explain to this child the difference between being taken by CPS and being kidnapped? The fact that the people from CPS almost certainly mean well and think they are doing what's best for the child isn't going to ease the suffering.

Meanwhile, CPS has at least 72 hours to prepare a case. On the other side is

almost always an impoverished, overwhelmed birth parent who, Hershberger admits, doesn't even get a lawyer until that very hearing.

And that lawyer may not have a lot of time.

*Phoenix New Times* reports that in Maricopa County, for example, private attorneys are assigned to represent parents and serve as guardians *ad litem* for children in child welfare proceedings. (GALs recommend what they think is best for the child, regardless of that the child may want.) The same private attorneys represent juveniles accused of delinquency. They are paid \$1,000 for the first year of a case, no matter

how much work they do, or how little. For every year the case continues thereafter, the amount falls to \$250 for a parent's attorney, \$400 for a GAL.

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**In a recent report to the legislature, DES admitted that families are being investigated by "an inexperienced workforce that is unable to deal with the complex issues present in the child welfare system."**

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Citing county figures, *New Times* reports that, under this system, 37 lawyers each made more than \$100,000. The lawyer who made the most in 2006 had 786 cases pending at the start of 2006 and added 500 more over the course of the year. At the start of 2007 she had 860 cases pending.

But the lawyer says those figures are wrong. She says she has only 468 cases. And besides, she says, the judges and her clients are not complaining about her work.

But reform is coming – sort of. New contracts, effective July 1, limit the total number of cases for any one lawyer to 260.<sup>90</sup>

Still another indication of the nature of legal representation for families can be seen in the data for termination of parental rights cases. From April through September, 2006, CPS in Arizona sought to terminate parental rights 370 times. They won 365 times.<sup>91</sup> Either CPS is practically never, ever wrong when it seeks to destroy a family forever, all the lawyers at CPS have the skills of Clarence Darrow, or they don't face much opposition.

Presiding over all this is a judge who knows that if he sends the child home and something goes wrong, his career may well

be over. But he can keep hundreds of children needlessly in foster care and, while the children will suffer terribly, the judge is safe.

The standard CPS must meet to hold the child in foster care at this hearing and every other until termination of parental rights is not "beyond a reasonable doubt" the standard he would have to meet were he trying a child murderer in criminal court, or even "clear and convincing" evidence, the middle standard used by the courts. The lawyer need only "prove" his case by "preponderance of the evidence," the lowest standard in American jurisprudence, the one used to decide which insurance company pays for a fender-bender.

A proposal to raise this standard was defeated in 2006.

For her part, Kamin cites internal processes that supposedly protect families, such as "removal review teams" which, as the name implies, check to see if a removal was a good idea after-the-fact. But half the members of the team are the worker who took the child in the first place, and her supervisor. And in her commentary citing these teams, Kamin neglected to mention that CAA has fought for years to get rid of them.<sup>92</sup>

There is one more problem with trying to substitute expertise for due process. Even if one believed it would work, the expertise doesn't exist. In a recent report to the legislature, DES admitted that families are being investigated by "an inexperienced workforce that is unable to deal with the complex issues present in the child welfare system."<sup>93</sup>

So at a minimum, shouldn't there be openness, accountability, and full due process until the necessary "expertise" is present?

### **Human teddy bears**

The Arizona foster-care panic has had one other dreadful effect – it exacerbated an artificial "shortage" of foster

homes. In 2005, fully 23 percent of children taken from their parents were forced into group homes or institutions.<sup>94</sup> With no place to put the children, they started backing up in one of the worst forms of placement of all, so-called “shelters.”

These places are bad for children even when they are used as intended, as a first-stop “parking place” for a few days.

When “care” provided by rotating shift staff drags on for months, it almost guarantees emotional problems for the children – and the younger the child, the greater the risk of enormous harm.

Yet shelters remain among the most sacred cows in all of child welfare. And no wonder. Donors love them. They can get a plaque on the wall for giving money or furniture or, if they’re really rich, donating a whole building. Volunteers love them. They can turn real flesh-and-blood human beings into human teddy bears who exist for the volunteers’ gratification and convenience, even as they convince themselves they’re helping children. When they get bored with their human teddy bears, they simply hand them back to the shift staff.

Shelters are exercises in adult self-indulgence and adult self-delusion. As with any form of orphanage, and that’s really what shelters are, a whole rationalization industry has grown up around them.

“How can you call us an institution?” the people who work at the local shelter say. “We have ‘cottages’ and they’re so pretty. We’re so *homelike*.”

But it’s not the buildings that make a home, it’s the people. And a succession of shift staff workers and ever-changing volunteers is no substitute for a family. Children know the difference between “homelike” and home. And they know the difference between a Potemkin Village family and a real family.

“Our shelter provides ‘stability’” the operators will say, so children don’t move from foster home to foster home. But again, it’s the *people* in a child’s life that create

stability, not the bricks and mortar. A child in a shelter endures a multiple placement whenever the shift changes. She endures multiple placement when the weekend workers replace the weekday workers. And she endures multiple placement when the volunteer who seemed so interested in her last week has something better to do this week and doesn’t show up.

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“We must be doing good work,” the volunteers say. “Look how the children come running up to us to hug us.” One staffer at a Nevada shelter said he loves coming to work because babies and toddlers “grab my leg. They call me Mr. Lou. They tell me they love me.”<sup>95</sup>

But when a young child grabs the legs of anyone who will pay him a little attention and tells him “I love you” he’s not getting better – he’s getting worse. He is losing his ability to truly love at all, because every time he tries to love someone, that person goes away. We are setting some of these children up to become adults unable to love or trust anyone.

The parking place industry will come back with claims that they can “assess” children and “stabilize” them, so that they can find the right foster home for the child when he or she leaves.

That was the theory in Connecticut, when they set up a network of such shelters

in 1995, in the wake of a foster-care panic in that state.

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**With everything we know about what works and what doesn't work for children in the 21<sup>st</sup> Century there is only one word for institutionalizing a child because his mother is homeless or his grandmother is ill: Barbaric.**

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But a comprehensive study of the shelters by Yale University and the Connecticut child welfare agency itself found that wasn't true either.

On the contrary, the children who went through the shelters tended to have worse outcomes than those who didn't. The only thing the shelters were good at was wasting huge sums of money.<sup>96</sup> (As usual, in child welfare, the worse the option for children, the more it costs.)

But in child welfare, research is no match for political clout and adult self-indulgence. Take away our human teddy bears? Never! As the *Hartford Courant* reported:

*"Three years after a study that showed short-term group homes for first-time foster children are a costly failure, the state Department of Children and Families is still funneling hundreds of children through the facilities each year."*<sup>97</sup>

The final rationalization is the one heard most in Arizona. It's the one in which the shelter operators admit shelters are not a great option but, they claim, there simply is no alternative. There just aren't enough foster homes, they say.

But all through the Arizona Foster Care Panic it was shelter operators, such as Chris Scarpati, director of Arizona's highest profile shelter, the East Valley Crisis Center, (EVCC)\* who could be counted on for an inflammatory quote encouraging the needless removal of children.

Six months into the panic, even as the Governor and even CAA were toning down the rhetoric, Scarpati insisted that her shelter had seen absolutely no cases of needless removal at all.<sup>98</sup> That would mean the same workers who allegedly repeatedly erred in one direction, leaving children in dangerous homes, somehow were perfect when it came to avoiding errors in the other.

Yet, even with the panic, that shelter had room for some dubious cases. A Christmas-themed story extolling the shelter in 2004 focused on two cases:

In case #1, a mother has to give up her child because she is homeless.

In case #2, a grandmother has to surrender her children because she "couldn't take the kids herself because of health problems." Then, after the children are separated from their grandmother, they are torn away from each other. EVCC insists it's for their own good.<sup>99</sup> In fact, it was almost certainly for EVCC's convenience. The shelter's own website revealed that children automatically are segregated by age. That's understandable. It's dangerous to mix age groups in an institution.

With everything we know about what works and what doesn't work for children in the 21<sup>st</sup> Century there is only one word for institutionalizing a child because his mother is homeless or his grandmother is ill: Barbaric

EVCC replied that these particular children had been placed "voluntarily," not taken by CPS. But, of course, if you are sick or homeless and no one is helping you

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\* The center recently changed its name to Child Crisis Center –East Valley and announced plans to merge with another such center. This report uses the name by which the shelter is best known.

## Should children of mothers like these be forced into a shelter?

*In a defense of the East Valley Crisis Center, Carol McCormack, president of the Mesa United Way, attacked NCCPR for supporting the plaintiffs in a lawsuit called Nicholson v. Williams. The lawsuit successfully stopped the New York City Administration for Children's Services (ACS) from tearing children from their mothers, solely because those mothers had been beaten.*

*Yes, "witnessing domestic violence" can be harmful to some children. But U.S. District Judge Jack B. Weinstein found the consensus of expert opinion is clear: taking children from battered mothers is much, much more harmful. Indeed, one expert said that taking a child from a mother whose only crime is to have been beaten by a husband or boyfriend is, for the child, "tantamount to pouring salt into an open wound." The judge's summary of expert testimony is available on our website, here: [http://www.nccpr.org/index\\_files/page0007.html](http://www.nccpr.org/index_files/page0007.html)*

*Asked flat out by a reporter, "What was worse for you: watching [the beating] happen or being taken from your mom?" a child replied the way almost anyone would expect: "Being taken away from my mother," she said.<sup>100</sup>*

*But McCormack says supporting these children's right to stay with the mothers they love is "delusional thinking."<sup>101</sup>*

*NCCPR is proud to have supported these families' suit, and proud that NCCPR's Vice President served as their co-counsel.*

*But it seems, Ms. McCormack feels children like these should be shut away in a shelter instead. And to our knowledge the East Valley Crisis Center has never disavowed her comments. Read the stories of the mothers, and see if you agree. (Except as noted, the facts and quotes are drawn directly from Judge Weinstein's decision.) Then ask yourself: How many children like these may be trapped in shelters throughout Arizona right now?*

Sharwline Nicholson held down a full-time job while pursuing a college degree in behavioral sciences and caring for her two children.

She decided to break off a relationship with her daughter's father because he lived far away in South Carolina. When she told him, he became enraged. "He started hitting on me, pounding me, kicking me..."<sup>102</sup>

But even as she was bleeding profusely, suffering from a broken arm, broken ribs, and gashes to her head, as she called 911 and waited for an ambulance to take her to a hospital, she arranged for a neighbor to care for her children.

But that wasn't enough for ACS. As Nicholson lay in her hospital bed, ACS took the children from the babysitter and threw them into foster care with strangers.

When ACS workers came to her hospital room to let her know, "there was no softness, no comfort, no explanation of where [the children] were, nothing," Nicholson said. "I compare it to kidnapping. I compare it to death."<sup>103</sup>

The ACS case manager said the children were in "imminent danger" because their mother was in the hospital and couldn't protect them. The case manager admitted he deliberately delayed notifying the court of the "emergency" removal to gain leverage over Nicholson and force her to meet ACS demands. He said this practice is common.

ACS charged Nicholson with "engaging in domestic violence" in front of the children. In fact, when she was beaten one child was asleep in another room, the other was in school.

"It reached the point where I said 'Oh, why did I call 911,'" Nicholson said.<sup>104</sup>

Nicholson could not even visit her children for eight days, and then only with supervision at a foster care agency. Notes Judge Weinstein, "Ms. Nicholson was able to locate her nine-month-old daughter within the building by following the sounds of her crying." She found her "sitting on a chair by herself with tears running down." She had a rash on her face, yellow pus running from her nose, and she seemed to have scratched herself. Her son had a swollen eye. He said the foster mother had slapped his face. When another foster mother was assigned to take him away, he asked the new foster mother: "You're not going to hit me, are you?"

Even after the court ordered the children returned, on condition that the family stay with a

cousin in The Bronx, ACS stalled for days – on grounds that the children would not have adequate bedding.

Long after being reunited, the harm ACS did to her children remains. Once, when her son heard police were in the building he froze and said “Oh no, they’re going to take me.”<sup>105</sup>

Winning back her own children has been only the beginning for Sharwline Nicholson. She’s joined the Board of Directors of the Child Welfare Organizing Project, and helps other families fight ACS. She hopes to open her own shelter for battered women and their children.<sup>106</sup>

Ekaete Udoh is from Nigeria, where she was forced into an arranged marriage with an abusive husband. The couple had five daughters. Udoh repeatedly obtained orders of protection against her husband, who claimed an inherent right to abuse his wife.

One night while Udoh was asleep her husband punched one of the children in the eye. She rushed to protect her daughter and took her to a doctor. After Udoh complained to police, her husband left the family home and never came back, ultimately returning to Nigeria.

One of the children told an ACS worker that “I felt very comfortable staying with [my mother]. I am safe .... I told her I didn’t think it was necessary to be removed, and I felt a great suffering if I was removed from my house.”

Nevertheless, after first demanding that Udoh show up in Family Court, ACS then took away her children on grounds that, if the mother was in court, the children would have no one at home after school – even though the children still at home were 12,13,16 and 17. ACS said the children might not have keys to the house.

The petition accused Udoh of neglect and of “engaging in domestic violence.” It falsely claimed that she had not sought orders of protection. Spaces on the petition where ACS is supposed to justify removing the children without a court order and explain why removal was necessary were left blank.

That didn’t stop Family Court from rubber-stamping the initial removal. And even after the court ordered the children returned, ACS waited for eight more days.

The Legal Aid Society, which represented the Udoh children, joined in demanding that they be returned home, noting that, while in foster care, the children were “missing classes because their foster mother is unable to get them to school on time” and, ironically, “the foster mother has refused to provide house keys to the children and they have been locked out of their foster home repeatedly.” One child called the time in care “very uncomfortable ... [the foster mother] treated us like we were criminals.”

Michele Garcia was beaten, for the first and only time, after an ex-boyfriend flew into a jealous rage. Garcia immediately took out an order of protection and moved herself and her three children in with an aunt.

An ACS domestic violence specialist found that, in Judge Weinstein’s words, “the children had no physical injuries, they had not been hurt during the attack on Ms. Garcia, their basic needs were being attended to, they were clean and neat, and they exhibited no symptoms of developmental disabilities. [The specialist] concluded that Ms. Garcia was a strong woman who would who would do anything to protect her children, and that removal of her children was not necessary.”

Nevertheless, six weeks after the incident the children witnessed, after the family was safely settled with Ms. Garcia’s aunt, the agency took the children away, apparently because Garcia had exercised her legal right not to have the children interviewed by strangers until she was sure that would not traumatize her children. The children were placed with a relative of the abuser.

When one of Ms. Garcia’s children asked the caseworker why she and her siblings were being taken away from their mother, the caseworker replied: “Over a phone call, if your mom would have called, you would not have been removed.”

At trial, [a supervisor] testified that ... the reason that she believed the children were in “imminent danger” was that the children were not receiving counseling and “ACS had no idea what was going on”

The children apparently didn’t get any counseling in foster care, either.

Nevertheless, Family Court found Garcia guilty of neglect and, even after Judge

Weinstein's ruling, ACS refused to drop the charges. It took a state appellate court decision to overturn Garcia's conviction.<sup>107</sup>

**Michelle Norris** was assaulted by her boyfriend when she announced she was breaking up with him. She called the police, got an order of protection and she and her two-year-old son moved out.

When she went back to collect her things, the boyfriend showed up, beat her again, grabbed the boy and locked himself in the bathroom.

The police forced Norris to leave. Then ACS charged her with "engaging in domestic violence" and "leaving [her son] with an abusive man." The ACS worker said the fact that the police forced her to leave was "irrelevant." ACS also threw in a charge of drug abuse, but later admitted that was unfounded,

Nevertheless, the court imposed requirements for drug testing and, of course, "counseling" and "parent education." Then ACS, on its own, threw in requirements that she maintain a job and get a two-bedroom apartment – a task made harder by the fact that she was forced to pay for her own "counseling" and "parent education."

When she finally got her son back, he had been traumatized by foster care. "He screams [whenever] I even walk in the other room. He thinks that I am leaving. Every time the doorbell rings he gets hysterical. ... I think he's very afraid to be away from me ever again."

cope with your illness or your homelessness, there is no real choice at all. If the money poured into EVCC and other shelters went into programs like housing assistance, health care, and drug treatment, parents wouldn't have to choose between waiting for CPS to take away their children because they're ill or homeless and giving them up to the shelter "temporarily" themselves.

When NCCPR raised this in an op ed column in that same newspaper, a prominent shelter supporter, Carol McCormack, President of the Mesa United Way, offered a reply which seems to suggest that shelters are the preferred option even for children whose mothers' only crime was to be beaten by a husband or a boyfriend.

McCormack condemned NCCPR for saying that such children should be allowed to stay with their mothers. We continue to take that position, with pride, because any other position is enormously harmful to children. To see why see, *Should children of mothers like these be forced into a shelter?* (Page 29).

To our knowledge, EVCC has never disavowed Ms. McCormack's comments.

Decades of research is nearly unanimous: Institutionalization is *inherently* harmful. And the younger the child, the greater the harm. No one who writes enthu-

siastically about shelters would argue that shift workers and volunteers dispensing indiscriminate pseudo-love to any child who walks in the door are a substitute for *their* love for their own children. It's doesn't work for other people's children either – and the children know it. That's why institutionalization does them so much harm.

Better child welfare systems know it as well.

The Alabama consent decree puts strict limits on shelters. The following is from *Making Child Welfare Work*, The Bazelon Center's book about the consent decree:

*"Because it is so traumatic to uproot a child, an important goal of [the Consent Decree] is to have the child's first placement be the only placement ... To minimize moves, the decree outlaws the use of shelter care except under unusual circumstances. Workers are not permitted to park a child in a shelter while they look for a more permanent placement, unless the child can receive the full range of necessary services while in the shelter and 'it is likely that the [child's] stay in foster care will not extend beyond his/her stay in the shelter.' [Emphasis in original]. What this meant was that counties had to develop a sufficiently large and flexible array of [placements] so they could*

*place children directly...to the setting determined as most appropriate for meeting the child's needs.*"<sup>108</sup>

The best indicator that the "no alternative" argument is just one more rationalization is simply who the shelters take in and who they leave out.

Everyone in child welfare knows the group for whom it is hardest to find a foster home: Teenagers, especially teenagers with behavior problems. To the extent that there is ever a "need" for a shelter or some other form of "congregate care" it would be for teens. Younger children are easier to place and babies usually easiest of all.

Yet many shelters, in Arizona and elsewhere, are only for children age 12 and younger. There is no better indication that shelters really exist to serve the adults who work and volunteer there. After all, a teenager who's been through removal from his or her home and, perhaps any number of other traumas, is as likely to spit in your face as to throw his arms around you. They don't make the best human teddy bears.

Although there have been plenty of treacly feature stories over the years, we know of no story in an Arizona newspaper that has taken a serious, critical look at shelters and their impact on children. But one newspaper offered the next best thing.

*Phoenix New Times* offered up a searing, award-winning expose of the educational equivalent of Arizona's parking place shelters: The Thomas J. Pappas School.<sup>109</sup> With the exception of allegations of financial impropriety at Pappas – we are aware of no such allegation against any Arizona children's shelter – *New Times* wound up telling the story of the shelters as much as the story of the school. The same uncritical news coverage from most media, the same faulty assumptions, and the same substitution of adult gratification for what really helps kids underlie both.

We invite anyone concerned with Arizona child welfare to read the *New Times* story, but each time the story says Pappas,

substitute "East Valley Crisis Center" or "Casa de los Ninos" or the name of any other shelter.

It's the same story.

### **The Arizona stalemate**

The shelter issue is one on which Dave Berns was able to make progress. In the most recent period for which data are available the number of children younger than age six trapped in shelters *for more than three weeks* was cut by 40 percent, from 272 to 177.<sup>110</sup>

But many more very young children still endure the trauma of institutionalization – they just are freed from the shelters within 21 days. And even this progress required the threat of a lawsuit from the Youth Law Center, a non-profit public-interest law office active in child welfare issues across the country.

Berns also was able to obtain a waiver of federal funding restrictions in order to bolster efforts to reunify families. That means federal aid normally restricted to foster care can be used to fund intensive help to families after children are returned home.

Berns also brought the Family to Family program to Arizona. The program is an initiative of the Annie E. Casey Foundation, which also helps to fund NCCPR. The program reduces foster care placements, shortens the length of such placements and keeps children connected to their communities. It also has a proven track record for safety.<sup>111</sup> So far, it is fully underway only in Maricopa County.

There are two reasons the "star czar" couldn't do more.

The first is the Great Arizona Stalemate. On the right: A legislative majority that thinks it is possible to curb wrongful removal of children by starving DES. You can't. (See *Memo to the right*, page 12).

On the left, our fellow liberals who, when the term "child abuse" is whispered in their ears, will endorse infringements on

civil liberties that would make John Ashcroft blush. (See *Memo to the left*, page 13).

Many on the left tend to be as unquestioning in their loyalty to the foster-care-industrial complex, the network of private agencies paid for each day they hold a child in foster care, as many on the right are to the military-industrial complex. A former Democratic Member of Congress and former chairman of the Arizona Democratic Party, sits on the national board of Devereux and chairs its Arizona advisory board.<sup>112</sup> And one Arizona lawmaker actually runs a foster care agency (see p.24).

So when the Arizona left finally squeezes more money out of the Arizona right, almost all of it gets plowed into hiring more workers to take away more children and put them in more foster homes and institutions. Recommendation #1 in this report is a way to break the stalemate (see page 41).

### **Other reasons for the perennial panic**

But there also are a series of other factors at play, factors which have kept the foster-care panic going in Arizona, when similar panics have stopped in other states.

That can best be seen by, once again, comparing Arizona and Illinois.

- *Financial incentives.* The federal government reimburses states for part of the cost of foster care for every eligible child. The reimbursement rate varies by state, ranging from 50 cents to 83 cents on the dollar. Typically about half of all foster care cases are eligible. So while it is almost always cheaper in total dollars to use safe, proven alternatives to foster care, foster care might cost a state less in some situations.

(As noted earlier, Dave Berns got a waiver from these restrictions, allowing some of this money to be used for family reunification, but that is still a small-scale program.)

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“... Congress should realize that far too many states ... when they do, for example, raise their adoption numbers, are doing so by including many clearly inadequate families ... along with the genuinely committed, loving families who want to make a home for these children, just to ‘succeed’ by boosting their numbers.”

-Marcia Lowry, executive director,  
Children’s Rights, Inc.

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Still another financial incentive encourages adoption. The federal government pays states a bounty of \$4,000 to \$8,000 for every finalized adoption over a baseline number. If the adoption fails and the child is returned to foster care the state doesn’t have to give the money back. On the contrary, if it places the same child again, it can collect another bounty, if the adoption comes after the baseline has been exceeded. This creates a profound incentive for quick-and-dirty, slipshod placements.

Even the executive director of Children’s Rights Inc., an organization hostile to family preservation and strongly pro-adoption, has acknowledged that “... Congress should realize that far too many states ... when they do, for example, raise their adoption numbers, are doing so by including many clearly inadequate families ... along with the genuinely committed, loving families who want to make a home for these children, just to ‘succeed’ by boosting their numbers.”<sup>113</sup>

And it doesn’t stop there. Much foster care and almost all group home and insti-

tutional care is handled by private agencies – the foster care-industrial complex. Typically these agencies are reimbursed for every day they hold a child in foster care. If the agencies do what they are supposed to do, work to return the child home or, when that really isn't possible, seek an adoptive home, the reimbursement stops.

Of course private agencies say they never even think of such things. When they tell us that the family is hopeless or the child is so damaged that he must stay in foster care, or in their residential treatment center, for a long, long time, they say it's based solely on their best judgment of the best interests of the child.

In fact, they tell us, they don't even decide when a child comes into one of their facilities or when he goes out. After all, only judges can make those decisions. To hear the agencies tell it, they are little more than bystanders.

And besides, they say in many cases, "we're non-profit. We have no need to make money on substitute care."

They probably even believe it. Agency executives don't gather in conference rooms and rub their hands with glee at the prospect of holding children in foster care.

But the will to survive can induce in non-profits a form of greed that is as corrosive of common decency as the worst corporate behavior.

As for judges, they are far more prone to wield rubber-stamps than gavels. They generally do what CPS asks them to do.

CPS workers often have no place to put a child except an institution, because institutions have swallowed up the money that could be used for alternatives. CPS also relies heavily on the private agencies to tell them when a child can return home.

And rationalization is powerful. The extent to which financial incentives affect private agency judgments became apparent when Illinois changed them.

By 1997, with the system on the verge of collapse and more than 50,000 children in foster care, the ACLU of Illinois, which, as noted at the start of this report, won a class-action lawsuit against the system, persuaded the Illinois Department of Children and Family Services to change the way it reimbursed private agencies.

Agencies were forced to compete for business. Those that could not move a portion of their children into safe, permanent homes each year would stop getting referrals.

When the incentives changed, and even though in Illinois as well, judges make the final decisions, 'lo and behold: The "dysfunctional" became functional, the "intractable" became tractable. Today, there are fewer than 17,000 children in foster care in Illinois.

But are the children safe? Were the children simply dumped out of their foster homes and institutions?

No. Under the Illinois consent decree, independent court monitors, beholden to no one, can look over everyone's shoulders and get whatever information they need to assess safety. They have concluded, repeatedly, that as foster care has plummeted, child safety has improved.

It's also had benefits for the children still in foster care. Illinois was able to bring home all of the hundreds of children it had placed in out-of-state institutions, some of which had been rife with abuse.

And when the main campus of what had long been thought to be a model institution in Illinois, Maryville, near Chicago, was exposed as being rife with abuse, Illinois did not have to turn its back. Officials stood up to Maryville's enormously powerful director and board, and pulled all the children out.<sup>114</sup> They could do that because with so many fewer children in foster care, there were better places to put them.

There has been much talk about the addiction problem in child welfare. But the biggest addiction problem in child welfare is

## Incentives in Arizona child welfare: a pop quiz

*Every workplace operates with incentives. Some can be found in laws, regulations and policy manuals, others are unwritten and spoken largely in whispers. Child welfare is no different. But guess which one incentive was the only one to be the topic of a story in the Arizona Daily Star:*<sup>115</sup>

### INCENTIVES FOR TAKING CHILDREN FROM THEIR PARENTS AND KEEPING THEM AWAY FROM THOSE PARENTS IN ARIZONA:

- **Adoption bounties.** The federal government pays states a bounty of \$4,000 to \$8,000 for every finalized adoption over a baseline number. Individual workers don't get these bounties, of course, but pulling in bounty money is likely to please their bosses.
- **Adoption press coverage.** The only time a child welfare agency is likely to get good press is when it gets those adoption numbers up – and no one looks to closely at how it was done. Witness the countless feature stories about annual “adoption days.”
- **Federal aid.** The federal government reimburses states from 50 to 83 cents on the dollar for every dollar spent holding a child in foster care; and about half of foster children typically are eligible. It's an open ended entitlement, no matter how many children are placed, the feds keep picking up a large share of the tab. There is no comparable incentive for keeping families together. The federal government spends more than nine times more on foster care than on alternatives.<sup>116</sup>
- **Per diem payments.** This incentive applies to private agencies that oversee many foster homes and provide most group home and institutional care. Typically these agencies are paid for every day they hold a child in care. Return the child home, or place the child for adoption, and the reimbursement stops.
- **Career advancement.** We are aware of no CPS worker anywhere in the country who has been fired, demoted, suspended or even slapped on the wrist for taking away too many children – not even when one of the children dies in foster care. All of these things have happened to workers, supervisors, and even agency chiefs after a child was left in a dangerous home and something went wrong.

*(continued on following page)*

### INCENTIVES FOR KEEPING FAMILIES TOGETHER IN ARIZONA

- 30 cents an hour in incentive pay, if the agency “Safely reduce[s] the number of children in out-of-home care” by less than one-third-of-one percent. This bonus also can be retained if the agency fails to reduce placements, but reaches other goals unrelated to child welfare.

### INCENTIVES FOR TAKING AWAY CHILDREN (Continued)

- **Family preservation press coverage.** Succeed in mending families and you are almost certain to go unnoticed in the local media. Be the worker on whose caseload a child “known to the system” died and you can expect scathing front-page coverage.
- **Racial bias.** Several studies have found pervasive racial bias in child welfare. For example, when caseworkers were given identical hypothetical cases – except for the race of the family – they were more likely to say the child was at risk when the family was described as Black.<sup>117</sup>

not substance-abusing parents, though that problem is serious and real. The biggest addiction problem in child welfare is big, powerful private agencies with their blue-chip boards of directors and political connections. These agencies are *addicted* to their *per diem* payments.

And they are putting their addiction ahead of the children.

- **Secrecy.** Child welfare systems can be more secret than the CIA. But even by child welfare standards, DES is obsessive about secrecy.

For example, if a child abuse case gets enormous public attention in New York City, usually the death of a child known-to-the-system, officials there won’t just comment when asked, they’ll call a news conference. They’ll distribute a detailed report on the case and answer questions for as long as reporters want to ask them.

It’s been that way for 11 years, since the New York State legislature passed a law allowing the city and every other public agency in the state to do it. (Counties and New York City run their own child welfare systems in New York.)

As a result, though the city’s child welfare agency has been accused of many things over the past decade, in that time it has never been accused of a cover-up.

A few other states have similar laws. And though backers of secrecy constantly claim that the federal government will punish states for such openness, none of these states has ever lost a dime, or even been threatened with such a loss.

But one state has the broadest, most sweeping law in the nation allowing its child welfare agency to comment on cases:

Arizona.

The changes made in state law in 2003 include a provision allowing DES to “provide CPS information to confirm, clarify or correct information concerning an allegation or actual instance of child abuse or neglect that has been made public by sources outside the department.”<sup>118</sup> There is no such thing as “can’t comment” in Arizona. What DES is really saying is: We choose to stonewall.

As this report is written State Rep. Jonathan Paton and other lawmakers are planning hearings on DES. They want the hearings to be open; DES is insisting that any discussion of specific cases must be behind closed doors.

We hope that even if nothing else is open, the lawmakers will call in DES officials to an open session and ask them one question:

“News accounts have told us about the deaths of Emily Mays, Dwight Hill, Ariana Payne, Tyler Payne and Brandon

Williams. Could you please confirm, clarify or correct the information in those accounts?"

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The biggest addiction problem in child welfare is big, powerful private agencies with their blue-chip boards of directors and political connections. These agencies are addicted to their *per diem* payments. And they are putting their addiction ahead of the children.

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Illinois is not as open as New York and other states. But it does have something else in common with New York and about a dozen other states: open courts. Anyone practicing in juvenile court in Illinois has an extra incentive to be well-prepared: At any time, a reporter can walk through the door and watch what's going on.

Unlike most other states with open courts, Illinois does not allow access to the general public. But allowing reporters in played an enormous role in curbing the Illinois foster care panic, because it changed the third key factor:

- *Media coverage.* The foster-care panic in Illinois was largely driven by the *Chicago Tribune*. The death of Joseph Wallace occurred in 1993, a year in which the *Tribune* pledged to report every killing of a child on the front page. Soon, however, the Wallace coverage took on a life of its own. For eight months, the paper used every opportunity to generalize from the exception and crusade against family preservation.

And when the report of the "Blue Ribbon Commission" that always follows such cases revealed that, in fact, the only

person to warn against returning Joseph to his mother was the family preservation worker, the *Tribune* never reported that fact.

But that report also prompted a *Tribune* reporter to do something no one from the paper had done to that point – actually walk into juvenile court and see for himself. The extraordinary two-part series that resulted was, in effect, a repudiation of everything that had been reported until then.

"While extreme cases like Joseph's receive the bulk of media attention, the great majority are far less clear-cut," the story said. "Many, experts say, could be resolved quickly if social services were available for parents who aren't directly harming their children but who don't have the means to care for them properly." Recommended solutions included "placing a premium on family preservation."

There was more: "Many experts believe that Cook County judges and attorneys are too quick to remove children, largely as a result of Joseph's death."

Rather than the problem being a law that forces the return of children to unsafe homes, the story found the opposite: The very minimal requirement to make "reasonable efforts" to keep families together is "widely ignored here."

By the time a team of *Tribune* reporters concluded a six-part series on the state child welfare agency in March 1994, the turnaround was almost complete.

First on the *Tribune's* list of solutions: "Keep children safely at home while families get help."

For the first time, the *Tribune* drew a distinction between what was, at the time, a very poorly run family preservation program in Illinois, and the real thing.

"Family preservation . . . hasn't always been done the right way or with the right families in Illinois. Still, it can work, and it's often the best answer for children, who can otherwise end up in a bureaucracy more harmful than their homes . . .

"[The program's] weaknesses, though, led some to dismiss all family preservation efforts as ineffective or even dangerous."

In contrast, no news organization in Arizona ever drew a distinction between the Arizona differential response program and more successful efforts.

The *Tribune* went on to praise the child welfare system in Alabama. Finally the *Tribune* lamented the fact that family preservation efforts may be hampered by federal financial incentives that favor foster care and by a "lingering public misperception." The *Tribune* did not say where this misperception came from.<sup>119</sup>

By 1995, a front-page story ran under the headline "Cases of Neglect May be only Poverty in Disguise."<sup>120</sup>

But this was not enough to stop, let alone, reverse the panic. The drumbeat of earlier family-bashing coverage had been seared into everyone's memories and it had terrified frontline workers. National media picked up on the early coverage, doing huge, similar stories – they, too, never noticed when the *Tribune* itself changed its mind. As a result, the *Tribune*'s early coverage had a profound impact on perceptions of child welfare by journalists all over the country.

But the later coverage gave the reform-minded administrator of the Illinois child welfare agency some breathing room to initiate changes and turn the system around. Dave Berns got no such opportunity.

The later *Tribune* stories were extraordinary in one other respect. They broke through the insularity that had characterized the newspaper's coverage until then. Until the *Tribune* looked at two other juvenile court systems -- eight months after Joseph Wallace died - no *Tribune* story compared Chicago to anyplace else. So no reporter ever was exposed to the many successful family preservation efforts in other states. Four years into the panic in Arizona, we have seen no story in any Arizona newspa-

per in which a reporter went to another state to compare a child welfare system to Arizona's.

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**No Arizona reporter can  
do what Illinois reporters can  
do: walk into any courtroom in  
the state at any time, and tell  
the world what they see.**

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But then, no Arizona reporter can do what Illinois reporters can do: walk into any courtroom in the state at any time, and tell the world what they see. They have no reason to question what resemblance, if any, the horror story cases bear to the normal run of families caught up in the system.

There was a pilot program providing limited access to some court hearings in Maricopa County starting in 1997. But apparently nobody told judges or journalists, because the legislature moved to create such a program once again in 2003, without realizing one already existed.

But by then Governor Napolitano was in office, and she demanded additional restrictions on access.<sup>121</sup> Essentially, one can see what the judge wants the reporter to see when the judge wants the reporter to see it, and there are severe restrictions on how much can be reported.

Like the one in Illinois, the Arizona foster-care panic has been largely media driven. First came the *Arizona Republic*'s eight-month crusade against family preservation, starting with the stories about Ann-dreah Robertson.

And even after the rest of the paper calmed down, columnist Laurie Roberts continued her own campaign, devoting column after column to every horror story she could find involving leaving children with dangerous parents, and ignoring every account of false accusation or harm in foster

care - except one. And once again, that one was about a middle-class family caught up in medical issues.<sup>122</sup>

So not only has there been no reporting to balance the early coverage, every time the panic might calm down, Roberts produces another spate of columns that helps ensure it will keep going.

The problem isn't the topics of the columns Roberts writes - the horror stories are real and it's essential that such cases see the light of day. The problem is what she will not write - about poverty confused with neglect, about parents who do not torture their children but lose them anyway and, most important, about why the horrors happen - not because of some fanatical desire to preserve bad families, but because workers lack the time to make good decisions.

Through most of this time, the two Tucson dailies largely ignored child welfare. After Emily Mays died in Tucson, they still largely ignored child welfare. Same thing after Dwight Hill died in Tucson. But then, as we've seen, Emily and Dwight died in the wrong place.

In contrast, when two child abuse tragedies involving the deaths of three children allegedly at the hands of birth parents occurred in quick succession this year, the Tucson papers got interested.

At the *Arizona Daily Star*, the cases became a springboard for a new round of attacks against efforts to keep families together. Most notably, in a system in which incentive after incentive encourages the needless separation of families, the *Star* went after the one puny incentive that goes the other way.<sup>123</sup>

Making things even worse: Pima County can afford a foster-care panic even less than the state as a whole. When the number of children removed from their homes over the course of a year is compared with the total number of children living in poverty statewide and in each county, Maricopa County takes 21 children for every thousand impoverished children, very close

to the state average of 22. But Pima County takes away 33 children for every thousand impoverished children - a rate 50 percent above the state average.

These figures are for the year ending September 30, 2006 - before all the publicity about CPS in the Tucson area. But the pattern goes back farther, and Tucson officials are quite proud of it.

In 2005 Christine Swenson-Lugo, dependency coordinator at the Pima County Juvenile Court Center told the *Tucson Citizen* that "if there is any question a child could be at risk, removal is the only choice." Hector Campoy, then the presiding judge in Juvenile Court said that Pima County takes, proportionately, even more children than the state as a whole because "our district has been a little more vigilant to err on the side of child safety."

But all that "erring on the side of child safety" didn't stop the deaths of Tyler and Ariana Payne or Brandon Williams (not to mention Emily Mays and Dwight Hill).

And by now, the rate of removal in Pima County almost certainly is even higher.

- *The advocacy community.* Still another difference between Illinois and Arizona is the role of outside child advocates. In Illinois, the Cook County "Public Guardian" whose office represents children in abuse and neglect cases was outspoken in support of the panic, but another leading advocacy organization, the ACLU of Illinois, opposed it. And the Illinois equivalent of CAA stayed neutral.

In Arizona, on the other hand, CAA cheered on the panic, and so did the shelter operators and other foster-care providers. They were only too glad to demonize dissent. For example, former State Rep. Laura Knaperek, a Republican, has shown more willingness to hear alternative points of view and more flexibility than many on the left in Arizona.

When she supported a very minimal increase in due process protections for fami-

# Newspapers mourn some children a lot more than others

In 2005, in rapid succession, two children from Tucson, Emily Mays and Dwight Hill, died in foster care. Then in 2007, three children in two families died, also in rapid succession, in the homes of birth parents.

The chart below lists the number of stories in three Arizona newspapers that mentioned each child. (There are many duplicates in the list, stories often mentioned both foster child deaths or the three birth child deaths)

Child	Place and year of death	NEWS STORIES		
		Arizona Daily Star	Tucson Citizen	Arizona Republic
Dwight Hill (Pima County)	Foster home, 2005	6	7	0
Emily Mays (Pima County)	Foster home, 2005	10	16	0
Ariana & Tyler Payne (Pima County)	Birth home, 2007	25	26	5
Brandon Williams (Pima county)	Birth home, 2007	26	30	1
Patrick Trauffer (Maricopa County)	Foster home, 2005	0	0	10
Anndreah Robertson (Maricopa County)	Birth home, 2001	0	0	53

Source: NCCPR canvass of newspaper online archives, August 1, 2007.

But these figures actually underestimate the disparity for several reasons.

First, reporters have had since 2005 to write about the Tucson foster children; the birth children in Tucson died in March, 2007.

Second, the foster child deaths inspired no enterprise reporting, just routine police and court stories although the death of Patrick Trauffer in foster care prompted a feature story sympathizing with foster parents.)<sup>124</sup> The deaths of birth children inspired a wave of stories attacking CPS, with the general theme that CPS was insufficiently aggressive in taking away children. But some of these stories did not mention the names of children involved in recent fatalities.

And third, in the time since the survey was conducted the gap is likely to have widened.

NCCPR has found a similar disparity across the country. A Nexis database search we conducted in 2000 found more than 1,000 stories about Elisa Izquierdo, a child who died a horrific death at the hands of her mother in New York City in 1995. Two years later, after Caprice Reid died an equally horrific death at the hands of a foster mother and a foster grandmother, there were only 36 stories.<sup>125</sup>

lies, CAA's Carol Kamin wrote a snide op ed column accusing her of believing Arizona was "protecting too many [children.]..."<sup>126</sup>

The only outside advocacy group to oppose the panic was Robin Scoins' one-woman organization, the Arizona Family

Rights Advocacy Institute – and a powerful state legislator has done everything he can to silence Scoins. (See page 24).

In addition, in 2004, a jury in Phoenix sent another wave of fear through the ranks of CPS workers, when it ruled that

they could be held personally liable if they left a child in her or his own home and something went tragically wrong.<sup>127</sup>

And so it has gone, week after week, month after month. Whenever there was a chance the panic might calm down, there would be something – a Roberts column, a Kamin op ed, or simply one more terrible

tragedy (possibly caused by the panic itself) to start it up again.

But the cycle does not have to continue. It can be broken, and Arizona can begin to move to the forefront of states in protecting children.

The first step is to break the stalemate.

## RECOMMENDATIONS:

### Help for families

#### **RECOMMENDATION 1: Enact a Grand Compromise on child welfare funding in Arizona.**

Last year, the Governor sought \$27 million in additional funding for child welfare, but she proposed to plow almost all of it into more investigations and more foster care.

In 2008, the Legislature should take the initiative. Instead of seeking to reduce a similar request, the Legislature should propose to spend at least an additional \$54 million on child welfare - double the increase sought by the governor in 2007.

But with one huge condition:

Every penny must go to alternatives to substitute care; things like primary prevention programs, such as Healthy Families Arizona, and the kinds of family preservation programs described in subsequent recommendations; in particular concrete services like housing and day care, to ameliorate the worst effects of poverty. *But not one cent more would go to substitute care.*

Of course any such compromise would require a provision mandating that DES not shift old money out of prevention when the new money came in.

The right says it would pay more for child welfare if only it knew the money wouldn't be spent to take away more children needlessly. The left says DES would

rely less on foster care if only it had the money for alternatives.

It's time for everyone to put the state's money where their mouths are.

#### **RECOMMENDATION 2: Restore differential response and do it right, this time.**

The Governor should admit that "investigate every case" turned into "investigate every case – often badly." She should acknowledge that this can't be fixed by throwing more caseworkers at the problem; that will only further widen the net of coercive intervention into families. And, of course, it won't deal with the fact that a child abuse investigation is, in itself, a traumatic experience for a child.

Every study of differential response in other states, including, the most recent and most extensive, found that safety has improved. So Arizona should study differential response programs that work, and then create a new one. This will free up more time for CPS workers to find children in real danger.

#### **RECOMMENDATION 3: Make concrete help available to ameliorate the worst aspects of poverty.**

Several studies have found that at least 30 percent of America's foster children could be safe in their own homes right now, if only their parents had decent housing. A rent subsidy so a family can get a better place to live is a vastly more humane option than tearing the family apart and throwing

the children into foster care. It also will cost taxpayers far less. Indeed, it is a paradox of child welfare that the worse an option is for children, the more it costs. Institutions cost more than group homes, which cost more than family foster homes, which cost more than safe, proven alternatives to foster care.

Similarly, one of the largest single categories of alleged maltreatment is “lack of supervision.” Often these are cases in which struggling single parents must work at low-wage jobs in order to feed their families and stay off welfare. When the sitter doesn’t show, these parents may well have to choose between staying home, getting fired, having no money for rent and losing their children because of homelessness, or going to work, leaving the children home alone and losing the children to a lack-of-supervision charge.

In other cases, the need created by poverty may be entirely unpredictable.

So Arizona caseworkers should use an idea pioneered in Alabama. They should be given “flex funds” a relatively small amount of money that they can use to help a family in just about whatever way the worker and the family think is best. Maybe the flex funds will be used as a security deposit or a first month’s rent on a better apartment, for example. Or maybe the funds will be used to repair a car so a parent can take a better-paying job. It’s amazing how much progress can be leveraged by that small investment.

**RECOMMENDATION #4: Create the program the legislature apparently thought it was creating ten years ago, Intensive Family Preservation Services. The program should be available to every family that needs it and it should rigorously follow the model established by the first such program, Homebuilders, in Washington State.**

The term “family preservation” actually was invented to apply to this type of program. Unlike differential response, which can be used for cases deemed low

risk when a call first comes into the hotline, IFPS is a “last ditch” intervention that can be used in some, though not all, cases where workers feel they have no choice but to place a child in foster care.

When these programs rigorously follow the Homebuilders model, study after study has shown that they reduce foster care placement – and they do it with a better track record for safety than foster care. For a detailed discussion of these studies see NCCPR Issue Papers #1, 10 and 11 at [www.nccpr.org](http://www.nccpr.org)

IFPS workers are rigorously trained and have caseloads no higher than three, so they can spend several hours a day with a family. They are on call 24/7 to deal with family crises. It still costs less than foster care because the intervention at this level of intensity usually lasts for no more than six weeks, after which the family is linked to less intensive help.

Because the worker spends so much time with the family, she is often the first to know when a family can’t be preserved – and will recommend removal to CPS whenever she thinks it is not safe to keep the family together. That’s one reason for the program’s outstanding safety record.

Many states claim to have such programs when in fact they don’t. It is common for states to “dilute” the model, either by giving IFPS workers too many cases and/or providing less intensive help over a longer time period.

That appears to be what has happened in Arizona.<sup>128</sup>

**RECOMMENDATION 5: Expand the Family to Family program.**

As noted earlier, this program is an initiative of the Annie E. Casey Foundation, which also helps to fund NCCPR. It now is fully available in parts of Maricopa County. The program has been widely associated with a process called Team Decisionmaking, in which everyone who knows and cares about a family is brought together to craft a plan to keep the children safe.

That might result in the child being able to remain in his or her own home. Or a relative or friend may be able to care for the child instead of placing the child with strangers. Such “kinship care” placements repeatedly have been proven to be not only more stable and better for a child’s well-being but also safer than what should properly be called “stranger care.”<sup>129</sup>

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**For the *children’s* sake,  
any parent who wants drug  
treatment should be able to  
get it immediately.**

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Or it may turn out that no plan can be crafted and foster care really is essential. In that case, Family to Family tries to place the children in their own communities, with foster parents who will act as mentors to birth parents instead of adversaries. This also makes visiting easier and the child doesn’t lose all his friends or have to change schools.

Child welfare agencies themselves move from centralized downtown units to neighborhood-based centers. A key goal is reducing group home and institutional placements.

An independent evaluation found that, nationwide, where Family to Family was implemented, fewer children were taken away, placements were shorter, and there was less bouncing of children from foster home to foster home.

Most important: Even though cases in which children ultimately *were* taken away and placed in foster care were more difficult, there was no increase in the recidivism rate, that is, the rate at which children returned home had to be placed in foster care again, and in some locations recidivism decreased.<sup>130</sup> That means all this positive change was done while making children

safer.

More recently, in Denver, Family to Family has cut the number of children placed in foster care by one-third, and placements in group homes and institutions have been cut 60 percent. When children must be placed in foster care, 62 percent are placed with relatives. And again, safety improved - reabuse of children has been reduced.<sup>131</sup>

**RECOMMENDATION 6: Make drug treatment available, on demand, to any parent who wants it.** As we noted earlier, anyone who really believes in putting the needs of children first will be willing to put those needs ahead of everything, including how they may feel about those children’s parents. And also as noted earlier, a major medical center study found that even children born with cocaine in their systems did better when left with birth parents able to care for them than they did in foster care. And addiction to methamphetamine is just as treatable as any other addiction.<sup>132</sup>

So for the *children’s* sake, any parent who wants drug treatment should be able to get it immediately. And where it is needed, it should be inpatient treatment at facilities where parents and their young children can live together.

This kind of treatment has proven to be both best for the child and most likely to succeed for the parent.<sup>133</sup>

Where might one create such facilities? One could start by converting some of the state’s parking-place shelters and residential treatment centers.

**RECOMMENDATION 7: Accelerate the reduction in use of shelters, group homes and other institutions.**

When the Youth Law Center first pressed Arizona to stop institutionalizing the youngest children, shelter operators said it was impossible. They insisted every single one of those children had no place else to go.

Now hundreds of them have begun to go elsewhere.

In other states and localities, residen-

tial treatment centers, shown in evaluation after evaluation to do children no good, either have been forced to close or had crises of conscience and, on their own, radically reduced institutionalization. They replaced it with Wraparound programs in which intensive help, round the clock if necessary, is brought right into a family's home, whether it's a birth family or a foster family.<sup>134</sup> And, as suggested above, because institutionalization is so expensive, Wraparound still costs less.

All it would take for Arizona to do the same is the political will to take on the "foster care-industrial complex." As some parking place shelters and residential treatment centers empty, they can be used as drug treatment campuses. Arizona would be replacing a proven failure with a proven success.

**RECOMMENDATION #8:**  
**Change financial incentives that encourage prolonged foster care and discourage finding safe, permanent homes for children.**

There are a variety of alternatives to paying private agencies for every day they hold a child in foster care. The Illinois model, in which agencies compete for business based on how good a job they do safely placing children in permanent homes, is one. If Arizona has too few agencies for meaningful competition, there are a variety of other approaches. But the first step is to break the private agency addiction to *per diem* reimbursement.

Arizona also should be pressing Congress to stop restricting most of the money it spends on child welfare to foster care. Again, there are a variety of ways to do this. But while some provide genuine flexibility, others are actually backdoor methods to funnel more funds into foster care.

### **Due process**

**RECOMMENDATION #9: Make the system fully transparent.**

**All court hearings in child maltreatment cases and almost all documents should be subject to a "rebuttable presumption" of openness.**

**Hearings and records would be closed only if the lawyer for the parents or the guardian *ad litem* for the child could persuade the judge, by clear and convincing evidence, that opening a given record or portion of a hearing would cause severe emotional damage to a child.**

**The judge then would keep closed only the minimum amount of material needed to avoid the damage.**

The people who work for CPS are not evil. But even the best of us would have trouble coping with nearly unlimited power and no accountability. One caseworker in another state allegedly told some parents: "I have the power of God." It's alarming if he said it. But what's even more alarming is: It's true. Caseworkers *do* have the power of God.

To give a young, inexperienced worker the power of God, send her out on what she is convinced is a Godly mission to rescue innocent children from the scum of the earth, knowing that there will be no penalty for removal and hell to pay if she leaves the child home and something goes wrong, and then expect her to exercise *self*-restraint is more than can be expected of most human beings. Rarely is the power of God accompanied by the wisdom of Solomon.

The power must be checked by accountability. And accountability is not possible in secret. Nor is accountability possible simply by hiring people with more expertise and assuming they will do the right thing, as Representatives Hershberger and Bradley seem to suggest.

It's not supposed to work that way in a democracy. That is why it is so urgent that all court hearings and almost all records in child welfare cases be presumed open.

An exception would be made to the presumption of openness for portions of documents that name people who reported

child abuse in confidence. Though even then, if a parent claims to be a victim of harassment, that parent should be allowed to ask a judge to review the record and, if the judge agrees there has been harassment, open this record as well, and give the accused the right to sue. (See following recommendation).

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Only the lawyer for a parent and the guardian *ad litem* for a child should be allowed to request secrecy. CPS should not even be allowed to *ask* for it. CPS has no interest in secrecy other than as a way to cover up its failings. If secrecy is truly needed to protect a child, that's what the guardian *ad litem* is there to ask for.

This, of course, goes much farther than current Arizona law on court hearings. But it also is more than most news organizations have sought when it comes to case records. News organizations generally seek transparency only in cases of child abuse fatalities.

While that is better than nothing, it has an unintended consequence: This limited degree of openness reinforces the misper-

ception that the system errs only in one direction, leaving children in dangerous homes.<sup>135</sup>

The hundreds of families who say their children were wrongfully removed still have no way to prove it; they remain thwarted by a "veto of silence."

They can tell their stories to reporters, but even if they have some limited documentation, the reporters may decline to write about the case, rather than risk the possibility that people at CPS are telling the truth when they heave meaningful sighs and say, as they so often do, "Oh, there's really so much more to it, and we *wish* we could tell you, but our hands are tied: Confidentiality, you know."

The fact that Arizona law actually allows DES to speak freely in these cases has not prevented the agency from invoking confidentiality. It should, however, stop reporters from acquiescing to the veto of silence. Instead, whenever DES claims it "can't comment," we hope reporters will remind readers that state law, in fact, allows the agency to "confirm, clarify or correct" information about any case.

The argument against opening hearings and records is that it would embarrass children.

That argument fails on several counts:

- The alleged potential for "trauma" does not explain why information is kept secret even after a child has died.
- In the overwhelming majority of cases there are no graphic details to report. Most cases involve "neglect." A child will not be testifying about being beaten or raped because that's not the accusation.
- The most traumatic cases are likely to involve not only child protection proceedings but criminal cases as well. These hearings already are public. Yet we have never seen nor heard a single account of a child saying that she or he was traumatized by the fact that such a trial was public. Nor do we

know of any adult coming forward years after the fact to complain of such trauma.

- At least 12 states have opened child protection proceedings to the press and the public. Two more let in reporters only. In every one of these states, the same fears were expressed initially as in Arizona. But a comprehensive nationwide examination by the *Pittsburgh Post-Gazette* found that none of the problems materialized. Indeed, over and over, one-time critics became converts.<sup>136</sup>

“Everyone complains about everything in New York,” says Judith Kaye, chief judge of that state’s highest court, the Court of Appeals. But, she says, in the years since she ordered all of the state’s family courts opened, “we’ve had no complaints about this.”

Her deputy, Chief Administrative Judge Jonathan Lippman says “It has been 100 percent positive with no negatives ... Our worst critics will say it was the best thing we ever did. Their fears were unfounded ... I wish other states would do it.”

One of those who initially opposed the change was Michael Gage, former administrative judge of the New York City family court. But now, Gage says, “I think it worked. From my view, it worked remarkably well.”

Another opponent was Jane Spinak, then head of the Juvenile Rights Division of the Legal Aid Society in New York City. But, Spinak says, “the consensus now is that [the court] is better open than when it was closed.”

Once the courts were opened, reporters saw the shabby conditions families had to endure. That led to funding for repairs. It’s also helped raise fees paid to the lawyers who defend impoverished parents – from \$40 an hour in court and \$25 an hour out of court, to \$75 an hour in all cases. Still not nearly enough, but an improvement.

The head of New York City’s child welfare agency when the courts were opened, Nicholas Scopetta, said opening up

the process helped him improve his agency. “We have not experienced a downside,” he said.<sup>137</sup>

New York is not alone. In Indianapolis, former Judge James Payne made an exception to his state’s closed courts policy for a national news program. He says well-run court systems can only benefit from openness. “I think we do a lot of good work in our system, and people don’t know about it ... because we keep the hearings closed.”

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## “Sunshine is good for children.”

--Judith Kaye, Chief Judge, New York State Court of Appeals

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Payne argues that it is disingenuous for some child welfare agencies to demand closed hearings to avoid “embarrassing” children and then post the children’s pictures, and, sometimes, intimate details about their problems, on websites promoting their adoption. Payne now runs the Indiana child welfare agency.

In Illinois, the press has been allowed into juvenile court for more than a century. This report already has documented how that radically changed the perspective of the state’s largest newspaper. The former head of the state’s child welfare agency, Jess McDonald, says the public should be allowed in, too. “We will only make mistakes if we are hidden in the back room,” McDonald says.

The reform-minded head of Allegheny County, Pennsylvania’s child welfare system, Marc Cherna, also supports opening hearings. And he supported the county’s judges when they agreed to give regular access to a reporter from the *Post-Gazette*.

In Oregon, hearings in abuse and neglect cases have been open for more than 25 years. “The appearance of being treated fairly is compromised when things are done

in secret,” says Oregon Circuit Judge Daniel Murphy. “People are suspicious of anything done secretly.”

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If, in fact, all court hearings and most records were open, we can't guarantee that no child ever will be embarrassed. But with everyone in the system under more public scrutiny, odds are more children would live long enough to blush.

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But perhaps most revealing is this: Of all the states to open proceedings, not one has closed them again. For example, after three years of experimenting in 12 counties, the Minnesota Supreme Court ordered open courts in child maltreatment cases statewide.<sup>138</sup> Surely if the experiment had been traumatizing children, it never would have been expanded.

And that shouldn't come as a surprise. Cases likely to be covered by the media are likely to fall into these categories:

- Cases where the child has been killed.
- Cases where the alleged abuse is so brutal that the details already are public knowledge because of police reports. These cases also are likely to be the subject of public, criminal proceedings.
- Overview stories about court systems, in which case examples can be used without revealing names.

No state court judge in America has a better reputation for concern about the welfare of children than Judge Kaye in New York. She stands by what she said when the courts first were opened:

“Sunshine is good for children.”

But open hearings are not enough. Often hearings are rushed and it can be hard to understand what's going on without context. That context often can be provided. In part, by case records. Arizona may, in fact, be free to release those records now. State law says DES is free to “confirm, clarify or correct” information. It doesn't say that DES is prohibited from doing so by providing records.

At the same time, it's important to remember that records usually are only CPS' side of the story. It is a story meant to persuade a judge – the equivalent of an indictment. They should not simply be accepted as fact.

If, in fact, all court hearings and most records were open, we can't guarantee that no child ever will be embarrassed. But with everyone in the system under more public scrutiny, odds are more children would live long enough to blush.

**RECOMMENDATION 10: The child abuse hotline should not accept anonymous calls.**

Of all the sources of child abuse reports, anonymous reports consistently are the least reliable. They're almost always wrong.

A study of every anonymous report received in the Bronx, N.Y., over a two-year period found that only 12.4 percent met the incredibly low criteria for “substantiating” reports – and not one of those cases involved death or serious injury. The researchers found that “one case was indicated for ‘diaper rash’ one case for welfare fraud, and two cases because the apartment was ‘dirty.’”<sup>139</sup>

Anonymous reporting should be replaced by *confidential* reporting. If someone who may have a grudge or someone who simply may be clueless wants to claim that a neighbor is abusing a child, that person should be required to give the hotline operator his or her name and phone number. That information still should be kept secret from the neighbor in almost all cases,<sup>140</sup> but

the hotline needs to know. That will immediately discourage false and trivial reports.

Of course, the objection to banning anonymous reports, and the objection to any kind of serious screening mechanism is, that some anonymous calls may be legitimate.

That's true.

If you ban anonymous reports, some real cases might be missed – though anyone who is sincere and has genuine reason to suspect maltreatment should be comfortable with confidential reporting.

But more real cases are missed now by overloading the system. The more cases that cascade down upon investigators the less time they get for each one. So some get short shrift. It is far safer for children if cases are screened rationally by eliminating anonymous reports, rather than irrationally based on which file floats to the top of the pile on a caseworker's desk.

As the authors of the Bronx study put it, in recommending that anonymous reports be rejected: "The resources of child protective agencies are not limitless. The time and energy spent investigating false reports could better be given to more serious cases, and children may suffer less as a result."<sup>141</sup>

**RECOMMENDATION 11: Raise the standard of proof at all child welfare hearings to "clear and convincing."** All decisions in child welfare involve balancing harms. The current, absurdly-low standard of proof assumes that harm is caused only when a child is left with birth parents and foster care will harm only parents whose children are taken, and not the children themselves.

Fifteen thousand children – the ones in the most recent study of the harm of foster care - are telling Arizona, and the rest of the nation, that this is wrong. There is risk in either direction. But the burden of proof always should rest with those who believe children don't belong in families. The current standard for proof is almost no standard at all.

Even a "clear and convincing" standard still is lower than the standard required to convict a child murderer.

**RECOMMENDATION 12: Create an institutional provider of defense counsel for families with support staff to do their own investigations and recommend alternatives to CPS case plans.**

Instead of private attorneys with hundreds of cases, parents should be represented by an institutional provider with resources at least equal to those of the lawyers representing CPS.

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**The burden of proof always should rest with those who believe children don't belong in families.**

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In New York City, the child welfare agency itself is supporting moving to such a system. And in Washington State, it's been working successfully in several counties for seven years.

The Washington program began in Pierce County, where the judge in charge of the county's juvenile courts was dismayed at the escalating rate of terminations of parental rights – knowing that he was dooming some of the children to a miserable existence in foster care.

So he persuaded the legislature to provide enough money for defense attorneys to have resources equal to those of the Attorney General's office, which represents the state child welfare agency in juvenile court. The result: successful reunification of families increased by more than 50 percent.

And that's not because lawyers "got their clients off."

Where the parents are innocent, lawyers have time to prove it. Where there is a problem in the home that must be corrected, the lawyers have time to sit down with the parents, explain early on what they are up against, guide them through the

process of making whatever changes are needed, and assist them in getting the help they need.

From 2000 to 2003, of 144 cases in the program in which families were reunified, not one was brought back to court.

"These children aren't coming back," said Washington State Supreme Court Justice Bobbie Bridge, a supporter of the program, "and we do get them back when we make bad reunification decisions."

The National Council of Juvenile and Family Court Judges is publicizing the results, and even the State Attorney General when the program began, who had to face the better-prepared lawyers, supported the project and wanted it expanded.<sup>142</sup> That is true in spite of the fact that, in her current job – governor – she is making statements much like those of Governor Napolitano when she accelerated the panic.

#### **RECOMMENDATION 13: Expand the scope of upcoming hearings.**

Legislative hearings have been called to examine the deaths of Brandon Williams and Tyler and Ariana Payne. Those cases deserve full public scrutiny. But so do the deaths of Emily Mays, Dwight Hill and Patrick Traufler, and so do the cases of children consigned needlessly to foster care. The extent to which lawmakers and the public demand answers should not depend on where a child happened to die.

#### **RECOMMENDATION 14: In all places where it appears, the phrase "best interests of the child" should be replaced with the phrase "least detrimental alternative."**

Currently, almost all state laws involving custody of children are liberally sprinkled with the phrase "best interests of the child."

But that is a phrase filled with hubris. It says we are wise enough always to know what is best and capable always of acting on what we know. In fact, those are dangerous assumptions that can lead us to try to fix what isn't broken or make worse what is.

More than thirty years ago, Albert Solnit, Joseph Goldstein, and Anna Freud,

proposed an alternative phrase. They said "best interests of the child" should be replaced with "least detrimental alternative."<sup>143</sup>

"Least detrimental alternative" is a humble phrase. It recognizes that whenever we intervene in family life we do harm. Sometimes we must intervene anyway, because intervening is *less* harmful than not intervening. But whenever we step in, harm is done.

The phrase "least detrimental alternative" is a constant reminder that we must always balance the harm that we may think a family is doing against the harm of intervening. It is exactly the shot of humility that every child welfare system needs.

### **Conclusion**

NCCPR often recommends that leaders of child welfare systems take a "best practices" tour to see what is working in the rest of the country.

But in Arizona, the people at the Department of Economic Security already know. After all, they brought in a national leader who had pioneered reform in El Paso County, Colorado.

What has been missing is any similar interest in what is going on elsewhere from much of the advocacy community and many who report on child welfare.

NCCPR has issued reports on child welfare systems in ten states, and traveled to at least 30. We have encountered no state more convinced that it has nothing to learn from anyplace else than Arizona. We have found no state more sure that it is not worth looking at anything done elsewhere because nothing done elsewhere could possibly apply to Arizona.

Had the people of Illinois had the same attitude that state's child welfare system still would be among the worst in the country. Instead they looked for models everywhere, and found one in Alabama.

The states, it is said, are laboratories of democracy. Isn't it time Arizona read the lab results?

## NOTES:

- <sup>1</sup> Illinois Department of Children and Family Services, *Signs of Progress in Child Welfare Reform* (Springfield, IL: 2001).
- <sup>2</sup> See the following stories from the Chicago *Tribune*: Rob Karwath, "Abused Kids Sleep in DCFS Offices," June 29, 1993; Ellen Warren, "Toddlers, Troubled Teens All Wait Together at DCFS," July 21, 1993, p.1; Rob Karwath, "Child Welfare Specialist Hired to Coordinate Overhaul of DCFS Site," Sept. 10, 1993; Rob Karwath, "DCFS Center Receives OK to House Kids," Dec. 17, 1993.
- <sup>3</sup> Personal communication.
- <sup>4</sup> State of Illinois, Department of Children and Family Services, Office of Quality Assurance, *Executive Statistical Summary*, January, 1998.
- <sup>5</sup> Personal communication.
- <sup>6</sup> NCCPR calculates the rate at which children are taken from their parents by comparing the number of children removed over the course of a year to the total number of impoverished children in each state. State-by-state entry into care data are available from the U.S. Department of Health and Human Services, Administration for Children and Families here: [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/statistics/entryexit2005.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/entryexit2005.htm) Impoverished child population data are from: U.S. Census Bureau, *Current Population Survey, Annual Demographic Survey, 2004 Annual Social and Economic Supplement*, available online at [http://pubdb3.census.gov/macro/032006/pov/new46\\_100125\\_03.htm](http://pubdb3.census.gov/macro/032006/pov/new46_100125_03.htm)
- <sup>7</sup> Metropolitan Chicago: Entries into care, State of Illinois Department of Children and Family Services, *Executive Statistical Summary*, available online at <http://www.state.il.us/DCFS/docs/execstat.pdf> Metropolitan Phoenix entries into care: Arizona Department of Economic Security, *Child Welfare Reporting Requirements, Semi-Annual Report, for the period April 1, 2006 through September 30, 2006*. Impoverished Child Population: U.S. Census Bureau, *Small Area Income and Poverty Estimates, Estimates for Arizona Counties, 2004*, available online at <http://www.census.gov/hhes/www/saie/saie.html>
- <sup>8</sup> Personal Communication, Ben Wolf, American Civil Liberties Union of Illinois. See also, Matthew Franck, "The pendulum," *St. Louis Post-Dispatch*, February 2, 2003.
- <sup>9</sup> Erik Eckholm, "Once Woeful, Alabama Is Model in Child Welfare," *The New York Times*, August 20, 2005, p.1.
- <sup>10</sup> U.S. Department of Health and Human Services, note 6, *supra*.
- <sup>11</sup> Eckholm, note 9, *supra*; see also: Ivor D. Groves, *System of Care Implementation: Performance, Outcomes, and Compliance, March, 1996, Executive Summary, p.3*.
- <sup>12</sup> For details, and comparisons among Florida's regions, see NCCPR's reports on Florida child welfare, available at [www.nccpr.org](http://www.nccpr.org)
- <sup>13</sup> U.S. Department of Health and Human Services, note 6, *supra*.
- <sup>14</sup> Carol Kamin, "Protecting children is not a numbers game," *East Valley Tribune*, September 14, 2005.
- <sup>15</sup> Arizona Child Fatality Review Program, *Thirteenth Annual Report*, November, 2006, available online at <http://www.azdhs.gov/phs/owch/cfr.htm>
- <sup>16</sup> Arizona Child Fatality Review Program, *Twelfth Annual Report*, available online at <http://www.azdhs.gov/phs/owch/cfr.htm>
- <sup>17</sup> *Child Welfare Reporting Requirements, and Small Area Income and Poverty Estimates* note 7, *supra*.
- <sup>18</sup> Karina Bland, "Rise in child deaths reveals CPS' plight," *The Arizona Republic*, January 13, 2003.
- <sup>19</sup> Joseph J. Doyle, Jr., "Child Protection and Child Outcomes: Measuring the Effect of Foster Care" *American Economic Review*. In Press, 2007. This study is available online at [http://www.mit.edu/~jjdoyle/doyle\\_fosterlt\\_march07\\_aer.pdf](http://www.mit.edu/~jjdoyle/doyle_fosterlt_march07_aer.pdf)
- <sup>20</sup> Byron Egeland, et. al., "The impact of foster care on development" *Development and Psychopathology*, (Vol. 18, 2006), pp. 57–76.
- <sup>21</sup> Peter Pecora, et. al., *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study* (Seattle: Casey Family Programs), 2005.
- <sup>22</sup> J William Spencer and Dean D. Kundsén, "Out of Home Maltreatment: An Analysis of Risk in Various Settings for Children," *Children And Youth Services Review* Vol. 14, pp. 485-492, 1992.
- <sup>23</sup> Mary K. Reinhart, "Foster kids swamp homes, CPS workers in Arizona," *East Valley Tribune*, September 30, 2003.
- <sup>24</sup> *Child Welfare Reporting Requirements*, note 7, *supra*.
- <sup>25</sup> *Ibid*.
- <sup>26</sup> Kathleen Wobie, Marylou Behnke et. al., *To Have and To Hold: A Descriptive Study of Custody Status Following Prenatal Exposure to Cocaine*, paper presented at joint annual meeting of the American Pediatric Society and the Society for Pediatric Research, May 3, 1998.
- <sup>27</sup> Information for this section is from: Josh Brodesky and Daniel Scarpinato, "CPS didn't check legal records on slain kids," *Arizona Daily Star*, July 31, 2007, Matthew Benson and Yvonne Wingett, "CPS case records released in deaths of 2 children," and "Investigation Timeline," *The Arizona Republic*, July 31, 2007, Josh Brodesky and Daniel Scarpinato, "Files document CPS efforts, failures" *Arizona Daily Star*, August 1, 2007; editorial, "When doing everything they can isn't enough," *Arizona Daily Star*, August 1, 2007, Josh Brodesky, "CPS violates own contact policy," *Arizona Daily Star*, August 12, 2007.
- <sup>28</sup> Deborah S. Harburger with Ruth Anne White, "Reunifying Families, Cutting Costs: Housing – Child Welfare Partnerships for Permanent Supportive Housing," *Child Welfare*, Vol. LXXXIII, #5 Sept./Oct. 2004, p.501.
- <sup>29</sup> Nina Bernstein, "Daily Choice Turned Deadly," *The New York Times*, October 19, 2003.
- <sup>30</sup> Sarah Fenske, "Suffer the Children," *Phoenix New Times*, October 26, 2006.
- <sup>31</sup> Wobie, note 26, *supra*.
- <sup>32</sup> For details and expert opinion see NCCPR's publication, *Epidemic of Hype*, available at [www.nccpr.org](http://www.nccpr.org) See also, Martha Shirk, "The Meth Epidemic: Hype vs. Reality," *Youth Today*, October, 2005, available online at [http://www.youthtoday.org/youthtoday/oct05/story2\\_10\\_05.html](http://www.youthtoday.org/youthtoday/oct05/story2_10_05.html)
- <sup>33</sup> Mary K. Reinhart, "Meth and Motherhood," *East Valley Tribune*, December 22, 2005.
- <sup>34</sup> *Ibid*.
- <sup>35</sup> Robert Nelson, "Ice, Ice, Baby" *Phoenix New Times*, November 24, 2005.
- <sup>36</sup> *Ibid*.
- <sup>37</sup> *Herlacher et. al. v. State of Arizona*, Complaint #297347, Superior Court of the State of Arizona, Pima County, Oct. 15, 1993.
- <sup>38</sup> Clint Williams and Norm Parish, "Few Grown-Ups Wanted to Bother With China Marie Davis," *The Arizona Republic*, April 9, 1994, p.A1.
- <sup>39</sup> Cynthia Andrews Scarcella et. al, *The Cost of Protecting Vulnerable children V*, (Washington, DC: The Urban Institute, May,

2004).

<sup>40</sup> Detailed data on Rhode Island's overuse of institutionalization can be found in a class-action lawsuit filed against the child welfare system this year by a group called Children's Rights, a group with no particular fondness for family preservation. See Complaint, *Sam and Tony M. v. Carcieri*, available online at <http://www.childrensrights.org/pdfs/RI%20Complaint%20signed.pdf>

<sup>41</sup> Bland, note 18, *supra*.

<sup>42</sup> Karina Bland, "Aid children first, caseworkers told," *The Arizona Republic*, January 10, 2003.

<sup>43</sup> Janet Napolitano, "Best interests of child must be paramount," *The Arizona Republic*, April 6, 2003.

<sup>44</sup> Rick Romley, "If we don't save kids from harm, who will?" *The Arizona Republic*, April 6, 2003.

<sup>45</sup> The earliest story in the *Republic's* online archive to mention Anndreah is dated August 21, 2002.

<sup>46</sup> Karina Bland, CPS worker followed rules in cocaine death of infant," *The Arizona Republic*, August 30, 2002.

<sup>47</sup> Arizona Department of Economic Security, *Child Welfare Reporting Requirements, Semi-Annual Report, for the period April 1, 2004 through September 30, 2004*, chart, p.v.

<sup>48</sup> Reinhart, note 23, *supra*.

<sup>49</sup> Fenske, note 30, *supra*.

<sup>50</sup> Brent Whiting, "Foster moms troubled by death," *The Arizona Republic*, March 1, 2003.

<sup>51</sup> Editorial, "No miracles," *East Valley Tribune*, June 20, 2003.

<sup>52</sup> Karina Bland, "Abuse suspicions batter innocent family," *The Arizona Republic*, May 08, 2002.

<sup>53</sup> Noreen Sharp, "Safety of kids must be highest CPS priority," *Arizona Daily Star*, May 25, 2003.

<sup>54</sup> *Child Welfare Reporting Requirements*, note 7, *supra*.

<sup>55</sup> Center for Law and Social Policy, *A Vision For Eliminating Poverty and Family Violence: Transforming Child Welfare and TANF in El Paso County, Colorado*, available online at

[http://m15080.kaivo.com/LegalDev/CLASP/DMS/Documents/1043875845.58/El\\_Paso\\_report.pdf](http://m15080.kaivo.com/LegalDev/CLASP/DMS/Documents/1043875845.58/El_Paso_report.pdf)

<sup>56</sup> Karina Bland, "Can star czar rescue CPS?" *The Arizona Republic*, April 13, 2004.

<sup>57</sup> Joyesha Chesnick, "Q&A: David Berns," *Tucson Citizen*, October 3, 2003.

<sup>58</sup> The national average for reports screened in is 62.7 percent, U.S. Department of Health and Human Services, *Child Maltreatment 2005*, available online at <http://www.acf.hhs.gov/programs/cb/pubs/cm05/index.htm> The Arizona figure is 59.2. Arizona data: Arizona Department of Economic Security, *Child Welfare Reporting Requirements, Semi-Annual Report, for the period October 1, 2005 through March 31, 2006*, p.iii. (The most recent such report, covering the following six months, does not include a figure for screened out reports, but the number screened in is about the same.)

<sup>59</sup> It does not help, however, that in most years since 1999, someone at DES has misunderstood the instructions on a form filled out for a federal report. It appears that whoever filled out the form confused the tiny number of reports that are handled by Indian tribes and the military with reports screened out. Therefore, the Arizona data on those reports make it look like DES has been investigating every case, and screening out nothing, all along. Providing information for these particular federal reports, the annual *Child Maltreatment* reports, is voluntary and the forms probably confusing. It is understandable that someone at DES with a great deal to do might misunderstand this.

<sup>60</sup> Joseph Goldstein, Anna Freud, and Albert J. Solnit, *Beyond The Best Interests of the Child* (New York: Free Press, 1973) pp.9, 25.

<sup>61</sup> Walter R. McDonald & Associates, *National Study of Child Protective Service Systems and Reform Efforts: Literature Review* (Washington, DC: U.S. Dept. of Health and Human Services, Administration for Children and Families, March, 2001) pp. 7,8.

<sup>62</sup> Institute of Applied Research, *Minnesota Alternative Response Evaluation: Final Report*, November, 2004, p.v.

<sup>63</sup> Karina Bland, "Family Builders enters child welfare scene," *The Arizona Republic*, December 28, 1997.

<sup>64</sup> For summaries and citations of a series of studies showing the safety and effectiveness of IFPS, see NCCPR Issue Paper 11, available online at <http://www.nccpr.org/newissues/11.html>

<sup>65</sup> Lane Barker, "CPS needs teeth to protect children," *East Valley Tribune*, September 9, 2003.

<sup>66</sup> In the course of examining RTC rates in Colorado, the state auditor there compared Colorado rates to several other states, including Arizona. State of Colorado, Office of the State Auditor, *Performance Audit: Residential Treatment Center Rate Setting and Monitoring*, January, 2002, p.22., available online at:

[http://www.leg.state.co.us/OSA/coauditor1.nsf/All/03B09032465B6D1D87256E3100713343/\\$FILE/1406%20RTC%20Perf%20FY%202002.pdf](http://www.leg.state.co.us/OSA/coauditor1.nsf/All/03B09032465B6D1D87256E3100713343/$FILE/1406%20RTC%20Perf%20FY%202002.pdf)

<sup>67</sup> U.S. Department of Health and Human Services. 1999. *Mental Health: A Report of the Surgeon General*. Washington, DC: Author. Available at: <http://www.surgeongeneral.gov/library/mentalhealth/chapter3/sec7.html#treatment>. This review found that "there is only weak evidence for [Residential Treatment Centers'] effectiveness." See also: Richard P. Barth, *Institutions vs. Foster Homes: The Empirical Base for a Century of Action*. University of North Carolina at Chapel Hill, School of Social Work, Jordan Institute for Families, Chapel Hill, NC., February 17, 2002.

<sup>68</sup> Shay Bilchik, "Residential Treatment: Finding the Appropriate Level of Care," *CWLA Residential Group Care Quarterly*, Summer, 2005.

<sup>69</sup> Josh Brodesky, Boy slips through CPS crack that's more like a chasm," *Arizona Daily Star*, July 29, 2007.

<sup>70</sup> *Child Welfare Reporting Requirements*, note 7, *supra*.

<sup>71</sup> Paul Davenport, "New Napolitano 'blueprint' for CPS cites emphasis on families," *The Associated Press*, September 16, 2006.

<sup>72</sup> Arizona Department of Economic Security: "Strengthening Families: A Blueprint for realigning Arizona's Child Welfare System," September, 2005, available online at <http://www.azdes.gov/dcyf/cps/pdf/Strengthening%20Families.pdf>

<sup>73</sup> *Child Welfare Reporting Requirements*, note 7, *supra*.

<sup>74</sup> Editorial, "Painful realities," *Arizona Republic*, August 24, 2005.

<sup>75</sup> Kim Smith, "Prosecutors receive OK for trial of foster parents in tot's death," *Arizona Daily Star*, June 14, 2007.

<sup>76</sup> A.J. Flick, "10 years' probation in child abuse case," *Tucson Citizen*, July 4, 2007.

<sup>77</sup> *In re: Gault* 387 U.S. 1 (1967).

<sup>78</sup> Pete Hershberger, "S1430 hinders us from keeping children safe," *Arizona Capitol Times*, May 27, 2006.

<sup>79</sup> *Ibid*.

<sup>80</sup> Kamin, note 14, *supra*.

<sup>81</sup> Information about this bill and its sponsors is available online at

[http://www.azleg.gov/DocumentsForBill.asp?Bill\\_Number=sb1111&image.x=11&image.y=9](http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=sb1111&image.x=11&image.y=9)

- <sup>82</sup> Personal communication, David Bradley, August 13, 2007.
- <sup>83</sup> Sarah Garrecht Gasson, "Protecting our children," *Arizona Daily Star*, July 22, 2007.
- <sup>84</sup> Personal communication, David Bradley, August 13, 2007.
- <sup>85</sup> Personal communication, Leslie Skoda, Associate Director, La Paloma Family Services, August 9, 2007.
- <sup>86</sup> Personal Communication, David Bradley, August 13, 2007.
- <sup>87</sup> Sarah Fenske, "Public enemy number one?" *Phoenix New Times*, March 22, 2007.
- <sup>88</sup> Pete Hershberger, "All lobbyists must heed rules," (letter to the editor) *Arizona Daily Star*, May 9, 2007.
- <sup>89</sup> Hershberger, note 78, *supra*.
- <sup>90</sup> Paul Rubin, "Outrageous Fortune," *Phoenix New Times*, April 19, 2007.
- <sup>91</sup> *Child Welfare Reporting Requirements*, note 7, *supra*.
- <sup>92</sup> Kamin, note 14 *supra*.
- <sup>93</sup> *Child Welfare Reporting Requirements*, note 7, *supra*.
- <sup>94</sup> *Blueprint*, note 72 *supra*.
- <sup>95</sup> Lindsay Patterson, "Clark County's Shelter Children in Dire Need of Homes," KLAS-TV, June 6, 2006.
- <sup>96</sup> Allen D. DeSena et. al., "SAFE Homes: Is it worth the cost?" *Child Abuse and Neglect* 29 (2005) 627-643.
- <sup>97</sup> Colin Poitras, "Special Homes Trouble State," *Hartford Courant*, July 23, 2006.
- <sup>98</sup> Mary K. Reinhart, "State removing more children from parents' care," *East Valley Tribune*, July 5, 2003.
- <sup>99</sup> Blake Herzog, "Sanctuary for kids," *East Valley Tribune*, December 25, 2004.
- <sup>100</sup> Dawn Fratangelo, "Double Jeopardy," *Dateline NBC*, July 31, 2001.
- <sup>101</sup> Carol McCormack, "Uncalled for and uninformed" *East Valley Tribune*, December 30, 2005.
- <sup>102</sup> Fratangelo, note 100, *supra*.
- <sup>103</sup> Wendy Davis, "Active Parenting," *City Limits*, June 2002, p.17.
- <sup>104</sup> *Ibid*.
- <sup>105</sup> *Ibid*.
- <sup>106</sup> *Ibid*.
- <sup>107</sup> Wendy Davis, "A Battered Mom isn't a Bad Mom, Court Tells City," *City Limits E-Mail Weekly*, March 10, 2003.
- <sup>108</sup> Bazelon Center for Mental Health Law, *Making Child Welfare Work* (Washington, DC: May, 1998).
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- <sup>110</sup> *Child Welfare Reporting Requirements*, note 7, *supra*. p.28.
- <sup>111</sup> C. Usher, D. Gibbs, and J. Wildfire, *Evaluation of Family to Family*, (Research Triangle Park, NC: Research Triangle Institute / Chapel Hill, NC: Jordan Institute For Families, School Of Social Work, University Of North Carolina, December, 1998) available online at <http://www.unc.edu/~lynnu/f2feval.htm>
- <sup>112</sup> See the bio of Sam Coppersmith, available here: <http://www.stennis.gov/Congressional%20Bios/samcoppersmith.htm>
- <sup>113</sup> Statement of Marcia Robinson Lowry, Executive Director, Children's Rights, Before the Subcommittee on Human Resources of the House Committee on Ways and Means, November 06, 2003.
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- <sup>116</sup> Annie E. Casey Foundation "Lifelong Family Connections: Supporting Permanence for Children in Foster Care," *Kids Count Databook*, July 2007, available online at: [www.kidscount.org](http://www.kidscount.org)
- <sup>117</sup> Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (New York: Basic Civitas Books: 2002)
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- <sup>120</sup> Juanita Poe and Peter Kendall, "Cases of Neglect May be only Poverty in Disguise," *Chicago Tribune*, December 24, 1995, p.1.
- <sup>121</sup> Le Templar, "Secrecy provision in CPS bill worries critics," *East Valley Tribune*, May 17, 2007.
- <sup>122</sup> Laurie Roberts "CPS finally swoops in, just not in right case," *The Arizona Republic*, October 13, 2003.
- <sup>123</sup> Brodesky, note 115, *supra*.
- <sup>124</sup> Whiting, note 50, *supra*.
- <sup>125</sup> The survey is discussed in Richard Wexler, "Caught in a Master Narrative: It's Why Many Stories About Child Welfare Get It Wrong" *Nieman Reports*, Winter, 2000.
- <sup>126</sup> Kamin, note 14, *supra*.
- <sup>127</sup> Michael Kiefer and Amanda J. Crawford, "Jury holds CPS staff, state liable for death," *The Arizona Republic*, September 9, 2004.
- <sup>128</sup> The website for one Arizona IFPS provider describes a program in which workers are in the home for as little as three hours a week, spread over 90 to 120 days. See <http://www.hrtaz.com/html/preservation.html>
- <sup>129</sup> Generations United, *Time for Reform: Support Relatives in Providing Foster Care and Permanent Homes for Children*, undated, 2007, available online at <http://kidsarewaiting.org/reports/files/timeforreform.pdf> See also: Mark Testa, et. al: *Family Ties: Supporting Permanence for Children in Safe and Stable Foster Care With Relatives and Other Caregivers* (University of Illinois Children and Family Research Center) October, 2004. Available online at [http://www.fosteringresults.org/results/reports/pewreports\\_10-13-04\\_alreadyhome.pdf](http://www.fosteringresults.org/results/reports/pewreports_10-13-04_alreadyhome.pdf)
- <sup>130</sup> Usher, Gibbs, and Wildfire, note 111, *supra*.
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- <sup>132</sup> Shirk, note 82, *supra*.
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<sup>135</sup> Simply because more children are in their own homes than in foster care, in raw numbers, more children die in their own homes. Proportionately, however, the rate of child abuse fatalities in foster care is higher than in the general population. About 0.73 percent of American children are in foster care, but 1.22 percent of child abuse fatalities are in foster care. U.S. Dept. of Health and Human Services, Administration on Children, Youth and Families. *Child Maltreatment 2002* (Washington, DC: U.S. Government Printing Office, 2003). See chart in Chapter 4.

<sup>136</sup> All of the quotes in this section are from the *Pittsburgh Post-Gazette* series, "Open Justice," by reporter Barbara White Stack. (Sept. 23-25 2001). The series is available at <http://www.post-gazette.com/nation/20010923opencourt0923p8.asp>

<sup>137</sup> Barbara White Stack, "Freedom to speak can lead to reform," *Pittsburgh Post-Gazette*, Sept. 24, 2001.

<sup>138</sup> Associated Press, Minnesota wire "Court orders child protection records opened to public," Dec. 27, 2001.

<sup>139</sup> William Adams, Neil Baronet and Patrick Tooman, "The Dilemma of Anonymous Reporting in Child Protective Services," *Child Welfare* 61, no. 1, January, 1982, p.12.

<sup>140</sup> The law should allow the accused to go to a judge and explain why he feels he is being harassed by false reports, and by whom. The judge should check the record and, if the accused is right, and if the judge is persuaded that the reports are an act of harassment, the name should be released to the accused, who should have the right to sue for damages.

<sup>141</sup> Adams, et. al., note 137, supra.

<sup>142</sup> Heath Foster, "Relying on good advice can reunite troubled families," *Seattle Post-Intelligencer*, February 12, 2003, p.B1.

<sup>143</sup> Goldstein, Freud, Solnit, Note 60, supra, p.53.